

# Exhibit 1

S-1 1 kenvues-1.htm S-1

As filed with the Securities and Exchange Commission on January 4, 2023.

Registration No. 333-

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM S-1  
REGISTRATION STATEMENT UNDER  
THE SECURITIES ACT OF 1933

**Kenvue Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**2844**  
(Primary Standard Industrial  
Classification Code Number)

**88-1032011**  
(I.R.S. Employer  
Identification Number)

**199 Grandview Road  
Skillman, NJ 08558  
(732) 524-0400**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Thibaut Mongon  
Kenvue Inc.  
199 Grandview Road  
Skillman, NJ 08558  
(732) 524-0400**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

**Michael E. Mariani  
Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
(212) 474-1000**

**John B. Meade  
Roshni Banker Cariello  
Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017  
(212) 450-4000**

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box: ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒ Smaller reporting company ☐  
Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.



The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion, Dated January 4, 2023

Preliminary Prospectus

Shares



Kenvue Inc.

Common Stock

This is an initial public offering of shares of the common stock of Kenvue Inc. We are offering                      shares of our common stock to be sold in this offering.

Prior to this offering, there has been no public market for shares of our common stock. We estimate that the initial public offering price per share of our common stock will be between \$                      and \$                      . We intend to apply to list our shares of common stock on the New York Stock Exchange (the “NYSE”) under the symbol “KVUE”.

Upon completion of this offering, Johnson & Johnson will continue to own                      % of the voting power of our shares of common stock eligible to vote in the election of our directors (or                      % if the underwriters exercise in full their option to purchase additional shares of our common stock from us to cover over-allotments). As a result, we will be a “controlled company” as defined under the corporate governance rules of the NYSE. See “Management—Controlled Company Exemption.”

**Investing in shares of our common stock involves risks. See “Risk Factors” beginning on page 20 to read about factors you should consider before purchasing shares of our common stock.**

**Neither the Securities and Exchange Commission nor any state securities commission or other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

	Per Share	Total
Initial public offering price	\$	\$
Underwriting discounts and commissions <sup>(1)</sup>	\$	\$
Proceeds to us, before expenses	\$	\$

(1) See “Underwriting” for a description of compensation to be paid to the underwriters

We have granted the underwriters an option for a period of 30 days from the date of this prospectus to purchase up to an additional                      shares of our common stock from us at the initial public offering price less the underwriting discounts and commissions to cover over-allotments.

The underwriters expect to deliver the shares of common stock against payment in New York, New York on or about                      .

Goldman Sachs & Co. LLC

J.P. Morgan

Prospectus dated                      .

However, the ability of LTL to successfully reorganize and resolve all Talc-Related Liabilities will depend on various factors and is subject to risks and uncertainties, including the ability to reach agreements with representatives of the claimants on the terms of a plan of reorganization that satisfies applicable legal requirements and to obtain the requisite court approvals of such plan. In addition, certain claimants alleging exposure to talc or talc-containing products have opposed LTL's efforts to resolve Talc-Related Liabilities in the bankruptcy proceedings, and there is a risk that the claimants may succeed in preventing LTL from doing so. As a result, LTL may not be able to successfully reorganize, and we cannot predict with certainty the amount of Talc-Related Liabilities that LTL or Johnson & Johnson will be required to pay, whether in connection with the bankruptcy proceedings or otherwise.

It is also possible that various parties will seek to bring and will be successful in bringing claims against us, including by raising allegations that we are liable for the Talc-Related Liabilities. Although, under the Separation Agreement, Johnson & Johnson will agree to indemnify us for the Talc-Related Liabilities and any costs associated with resolving such claims, we cannot assure you that the indemnity from Johnson & Johnson will be sufficient to protect us against the full amount of these liabilities or that Johnson & Johnson will be able to fully satisfy its indemnification obligations. See "—Risks Related to Our Relationship with Johnson & Johnson—In connection with the Separation, Johnson & Johnson will indemnify us for certain liabilities. However, we cannot assure you that the indemnity will be sufficient to protect us against the full amount of such liabilities or that Johnson & Johnson's ability to satisfy its indemnification obligation will not be impaired in the future."

Furthermore, we have been, and may continue to be, subject to claims arising out of the sale of talc-based Johnson's Baby Powder that do not constitute Talc-Related Liabilities, including claims relating to the sale of talc-based Johnson's Baby Powder outside the United States or Canada. We are currently subject to a few such claims which are in early stages, and as such, we cannot reasonably estimate any probable loss relating to such claims. While we believe we have substantial defenses to these claims, it is not feasible to predict the ultimate outcome of these litigations. Although we have discontinued the sale of talc-based Johnson's Baby Powder in certain markets, including the United States and Canada, and the sale of talc-based Johnson's Baby Powder will be discontinued globally in 2023, we presently sell talc-based Johnson's Baby Powder in certain other markets around the world. Given this, we may be subject to additional claims related to the sale of talc-based Johnson's Baby Powder in markets where we presently sell this product, as well as additional claims related to the sale of talc-based Johnson's Baby Powder in markets where we have discontinued this product (such as in the United States and Canada), including potential governmental inquiries, investigations, claims and consumer protection cases from state attorneys general. We expect that these other claims, whether currently pending or made in the future, would not be resolved by LTL's bankruptcy filing and that any related liabilities would not be covered by Johnson & Johnson's indemnification obligations under the Separation Agreement. As a result, it is possible that these additional claims could adversely affect our business, results of operations or financial condition.

In addition, Johnson & Johnson has received inquiries, subpoenas and requests to produce documents regarding talc matters from various U.S. governmental authorities and is also subject to consumer protection cases and investigations from state attorneys general.

***We may not be able to successfully establish, maintain, protect and enforce intellectual property rights that are, in the aggregate, material to our business.***

We rely on a combination of intellectual property rights, including our trademarks, trade secrets, patents and copyrights, as well as rights to third-party intellectual property pursuant to licenses and other contracts, to establish, maintain, protect and enforce the intellectual property and proprietary information used in our business.

We may not be able to establish, maintain, protect or enforce our own intellectual property rights or, where appropriate, license in intellectual property rights necessary to support new product introductions. In addition, intellectual property is territorial, and, even if such rights are protected in the United States, the laws of other countries in which our products are or may be sold do not universally protect intellectual property rights to the same extent or in the same way as U.S. intellectual property laws. Public policy, both within and outside the United States, has often become increasingly unfavorable toward certain classes of intellectual property rights. We cannot be

# Exhibit 2

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MIDDLESEX COUNTY  
DOCKET NO. MID-L-3095-18 AS  
CIVIL ACTION

MARIA FOLEY AND JOSEPH :  
FOLEY, HUSBAND AND WIFE, :  
:   
Plaintiffs, :  
:   
vs. :  
:   
AVON PRODUCTS, INC., et :  
al., :  
:   
Defendants. :

(CAPTION CONTINUED ON FOLLOWING PAGE)

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- - -  
Friday, February 15, 2019  
- - -

Oral sworn videotaped deposition  
of NANCY MUSCO, held at the law offices of  
Drinker, Biddle & Reath LLP, 105 College Road  
East, Princeton, New Jersey commencing at  
10:11 a.m. before Sharon L. Martin,  
Registered Professional Reporter, Certified  
Court Reporter-NJ, Notary Public.

- - -  
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<p style="text-align: right;">Page 2</p> <p>1 SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MIDDLESEX COUNTY 2 DOCKET NO MID-L-600-18 AS CIVIL ACTION 3 4 LISA FRACE, INDIVIDUALLY : AND AS REPRESENTATIVE OF : THE ESTATE OF CAROLE : 5 DICERBO, DECEASED, : : 6 Plaintiffs, : : 7 vs : : 8 BRENNTAG NORTH AMERICA, et : al, : 9 : Defendants : 10 11 ----- 12 13 SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MIDDLESEX COUNTY DOCKET NO MID-L-4252-18 AS 14 CIVIL ACTION 15 VICMAR GATMAITAN, : INDIVIDUALLY AND AS : 16 REPRESENTATIVE OF THE : ESTATE OF MELISSA E : 17 ROONEY, DECEASED, : : 18 Plaintiffs, : : 19 vs : : 20 IMERYS TALC AMERICA, INC, : et al, : 21 : Defendants : 22 23 24 25 (CAPTION CONTINUED ON FOLLOWING PAGE)</p>	<p style="text-align: right;">Page 3</p> <p>1 SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MIDDLESEX COUNTY 2 DOCKET NO MID-L-6805-16 AS CIVIL ACTION 3 4 ANITA GRABOWSKI and ALFRED : GRABOWSKI, HUSBAND and : 5 WIFE, : : 6 Plaintiffs, : : 7 vs : : 8 BRENNTAG NORTH AMERICA, et : al, : 9 : Defendants : 10 11 ----- 12 13 SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MIDDLESEX COUNTY 14 DOCKET NO MID-L-2456-18 AS CIVIL ACTION 15 16 ROBERT GREENE, III, : INDIVIDUALLY AND AS : ADMINISTRATOR OF THE ESTATE : 17 OF DEBORAH GREENE BRAKE, : DECEASED; STEPEHEN A : 18 BRAKE; AND THE INDIVIDUAL : HEIRS OF THE ESTATE OF : 19 DEBORAH GREENE BRAKE, : : 20 Plaintiffs, : : 21 vs : : 22 BRENNTAG NORTH AMERICA, et : al, : 23 : Defendants : 24 25 (CAPTION CONTINUED ON FOLLOWING PAGE)</p>
<p style="text-align: right;">Page 4</p> <p>1 SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MIDDLESEX COUNTY 2 DOCKET NO MID-L-4826-18 AS CIVIL ACTION 3 4 EMMA GRIFFIN AND WALTER : GRIFFIN, HUSBAND AND WIFE, : 5 : Plaintiffs, : : 6 vs : : 7 CYPRUS AMAX MINERALS : COMPANY, et al, : 8 : Defendants : 9 10 ----- 11 12 SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MIDDLESEX COUNTY DOCKET NO MID-L-5368-17 AS 13 CIVIL ACTION 14 15 MATTHEW HODJERA and SYLVIA : DUFF-PETO, : : 16 Plaintiffs, : : 17 vs : : 18 BORGWARNER MORSE TEC, LLC, : et al, : 19 : Defendants : 20 21 22 23 24 25 (CAPTION CONTINUED ON FOLLOWING PAGE)</p>	<p style="text-align: right;">Page 5</p> <p>1 SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MIDDLESEX COUNTY 2 DOCKET NO MID-L-7049-16 AS CIVIL ACTION 3 4 D'ANGELA M MCNEILL-GEORGE, : : 5 Plaintiff, : : 6 vs : : 7 BRENNTAG NORTH AMERICA, et : al, : 8 : Defendants : 9 10 ----- 11 12 SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MIDDLESEX COUNTY DOCKET NO MID-L-598-18 AS 13 CIVIL ACTION 14 15 LORETTA SELVAGGIO, : : 16 Plaintiff, : : 17 vs : : 18 BRENNTAG NORTH AMERICA, et : al, : 19 : Defendants : 20 21 ----- 22 23 SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MIDDLESEX COUNTY DOCKET NO MID-L-6635-17 AS 24 CIVIL ACTION 25 26 LEONARD E WENDOWSKI, SR, : AND KATHLEEN WENDOWSKI, : HUSBAND AND WIFE, : 27 Plaintiff, : : 28 vs : : 29 IMERYS TALC AMERICA, INC, : et al, : 30 : Defendants :</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 6</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 COHEN, PLACITELLA, ROTH, P C</p> <p>4 BY: CHRISTOPHER PLACITELLA, ESQUIRE</p> <p>5 JARED M PLACITELLA, ESQUIRE</p> <p>6 LEA CALLAHAN, PARALEGAL</p> <p>7 Two Commerce Square</p> <p>8 2001 Market Street, Suite 2900</p> <p>9 Philadelphia, PA 19103</p> <p>10 (215) 567-3500</p> <p>11 cplacitella@cpirlaw.com</p> <p>12 jmplacitella@cpirlaw.com</p> <p>13 Counsel for the Plaintiffs</p> <p>14</p> <p>15 SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM, LLP</p> <p>16 BY: RICHARD T BERNARDO, ESQUIRE</p> <p>17 ANDREW KARP, ESQUIRE</p> <p>18 4 Times Square</p> <p>19 New York, NY 10036</p> <p>20 (212) 735-3453</p> <p>21 richard.bernardo@skadden.com</p> <p>22 andrew.karp@skadden.com</p> <p>23 Counsel for the Defendant, Johnson &amp;</p> <p>24 Johnson</p> <p>25</p> <p>McGIVNEY, KLUGER &amp; COOK, P C</p> <p>BY: JONATHAN C LEE, ESQUIRE</p> <p>18 Columbia Turnpike</p> <p>Florham Park, NJ 07932</p> <p>(973) 822-1110</p> <p>jlee@mkclaw.us.com</p> <p>Counsel for the Defendant, Whittaker,</p> <p>Clark &amp; Daniels</p>	<p style="text-align: right;">Page 7</p> <p>1 APPEARANCES (CONTINUED):</p> <p>2</p> <p>3 O'TOOLE, SCRIVO, FERNANDEZ, WEINER,</p> <p>4 VAN LIEU, LLC</p> <p>5 BY: LESLIE ELLIS LOMBARDY, ESQUIRE</p> <p>6 (via telephone)</p> <p>7 14 Village Park Road</p> <p>8 Cedar Grove, NJ 07009</p> <p>9 (973) 239-5700</p> <p>10 llombardy@oslaw.com</p> <p>11 Counsel for the Defendant,</p> <p>12 Colgate-Palmolive Co</p> <p>13</p> <p>14 RAWLE &amp; HENDERSON, LLP</p> <p>15 BY: LINDA DOBBINS, ESQUIRE</p> <p>16 (via telephone)</p> <p>17 The Widener Building</p> <p>18 One South Penn Square</p> <p>19 Philadelphia, PA 19107</p> <p>20 (215) 575-4303</p> <p>21 ldobbins@rawle.com</p> <p>22 Counsel for the Defendant, Cyprus Amax</p> <p>23 Minerals Company</p> <p>24</p> <p>25 HAWKINS, PARNELL &amp; YOUNG, LLP</p> <p>BY: ELIZABETH KELLY, ESQUIRE</p> <p>(via telephone)</p> <p>600 Lexington Avenue, 8th Floor</p> <p>New York, NY 10022</p> <p>(646) 589-8722</p> <p>ekelly@hpylaw.com</p> <p>Counsel for the Defendant, Revlon, Inc</p> <p>---</p> <p>ALSO PRESENT:</p> <p>Thomas Karwacki, The Videotape Operator</p>
<p style="text-align: right;">Page 8</p> <p>1 WITNESS INDEX</p> <p>2</p> <p>3 TESTIMONY OF: NANCY MUSCO</p> <p>4 EXAMINATION PAGE</p> <p>5</p> <p>6 By Mr C Placitella 12</p> <p>7</p> <p>8 ---</p> <p>9</p> <p>10 EXHIBITS</p> <p>11</p> <p>12 EXHIBIT NAME DESCRIPTION PAGE</p> <p>13 Exhibit P-1 Letter dated 11</p> <p>14 September 13, 2018,</p> <p>15 Corporate Deposition</p> <p>16 Notice and Request for</p> <p>17 Production of Documents</p> <p>18 Exhibit P-2 Chart 71</p> <p>19 Exhibit P-3 Trial transcript of John 183</p> <p>20 Hopkins, Ph D</p> <p>21</p> <p>22 Exhibit P-4 Handwritten document 173</p> <p>23</p> <p>24 Exhibit P-5 Ad 181</p> <p>25</p> <p>Exhibit P-6 Depositions and testimony 288</p> <p>of Dr Hopkins</p> <p>Exhibit P-7 Testimonies and 288</p> <p>interrogatories for Selby</p> <p>and Krushinski</p> <p>Exhibit P-8A Documents sent to 289</p> <p>Dr Hopkins</p> <p>Exhibit P-8B Documents sent to 289</p> <p>Dr Hopkins</p>	<p style="text-align: right;">Page 9</p> <p>1 EXHIBITS (CONTINUED)</p> <p>2</p> <p>3 EXHIBIT NAME DESCRIPTION PAGE</p> <p>4</p> <p>5 Exhibit P-9 Unidentified documents 290</p> <p>6 Exhibit P-10 Deposition transcript 290</p> <p>7 of Nancy Musco</p> <p>8</p> <p>9 Exhibit P-11 Complaint 291</p> <p>10</p> <p>11 Exhibit P-12 Complaint 291</p> <p>12</p> <p>13 Exhibit P-13 Complaint 291</p> <p>14</p> <p>15 Exhibit P-14 Notes 291</p> <p>16</p> <p>17 (**Exhibits P-6 through P-14 were retained</p> <p>18 by Mr C Placitella)</p> <p>19</p> <p>20 Exhibit J&amp;J-8 April 15, 1969 Memo 65</p> <p>21 Exhibit J&amp;J-172 Deposition transcript 207</p> <p>22 of Glenn A Hemstock</p> <p>23</p> <p>24 Exhibit J&amp;J-173 Continuation deposition 208</p> <p>25 transcript of Glenn</p> <p>Hemstock</p> <p>Exhibit J&amp;J-188 Stipulation of Dismissal 224</p> <p>Exhibit J&amp;J-195 Affidavit 266</p> <p>Exhibit J&amp;J-277 Answers to Plaintiffs' 173</p> <p>Supplemental</p> <p>Interrogatories</p> <p>Exhibit J&amp;J-282 (Not attached) 262</p>

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<p>1 EXHIBITS (CONTINUED)</p> <p>2</p> <p>3 EXHIBIT NAME DESCRIPTION PAGE</p> <p>4</p> <p>5 Exhibit J&amp;J-294 Deposition transcript 202</p> <p>6 of Roger N. Miller</p> <p>7 Exhibit J&amp;J-412 Handwritten document 34</p> <p>8 Exhibit J&amp;J-436 Deposition transcript 210</p> <p>9 Of Peter N. Gale</p> <p>10</p> <p>11 Exhibit J&amp;J-446 Agreement 274</p> <p>12</p> <p>13 Exhibit J&amp;J-448 Memo 154</p> <p>14</p> <p>15 Exhibit J&amp;J-450 Letter 152</p> <p>16</p> <p>17 Exhibit J&amp;J-452 Memo 155</p> <p>18</p> <p>19 Exhibit J&amp;J-453 Document entitled 170</p> <p>20 George Lee's Talc Files</p> <p>21</p> <p>22 Exhibit J&amp;J-456 Memo 282</p> <p>23</p> <p>24 Exhibit J&amp;J-483 Memo 203</p> <p>25</p> <p>26 Exhibit J&amp;J-486 Privilege log 74</p> <p>27</p> <p>28 Exhibit J&amp;J-488 Chart 146</p> <p>29</p> <p>30 ---</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p>	<p>1 ---</p> <p>2 (Exhibit P-1, Letter dated</p> <p>3 September 13, 2018, Corporate Deposition</p> <p>4 Notice and Request for Production of</p> <p>5 Documents, is marked for identification.)</p> <p>6 ---</p> <p>7 THE VIDEOTAPE OPERATOR: We are</p> <p>8 now on the record.</p> <p>9 This begins videotape number</p> <p>10 one in the deposition of Nancy Musco in the</p> <p>11 Matter of the Estate of Maria Foley versus</p> <p>12 Avon Products, Inc., et al., in the Superior</p> <p>13 Court of New Jersey, Law Division, Middlesex</p> <p>14 County, Docket number MID-L-3095-18 AS.</p> <p>15 Today is Friday, February 15,</p> <p>16 2019 and the time is 10:11 a.m.</p> <p>17 This deposition is being taken</p> <p>18 at 105 College Road East, Princeton, New</p> <p>19 Jersey at the request of Cohen, Placitella &amp;</p> <p>20 Roth.</p> <p>21 The videographer is Thomas</p> <p>22 Karwacki of Magna Legal Services.</p> <p>23 And the court reporter is</p> <p>24 Sharon Martin of Magna Legal Services.</p> <p>25 Appearance of counsel will be</p>
Page 12	Page 13
<p>1 noted on the stenographic record.</p> <p>2 Will the court reporter please</p> <p>3 swear in the witness?</p> <p>4 ---</p> <p>5 NANCY MUSCO, having been duly</p> <p>6 sworn, was examined and testified as follows:</p> <p>7 THE VIDEOTAPE OPERATOR: You</p> <p>8 may proceed.</p> <p>9 ---</p> <p>10 EXAMINATION</p> <p>11 ---</p> <p>12 BY MR. C. PLACITELLA:</p> <p>13 Q. Good morning, Miss Musco. How are</p> <p>14 you?</p> <p>15 A. Good morning.</p> <p>16 Q. We're here together again.</p> <p>17 You're here -- last time I took</p> <p>18 your deposition you were taken as a fact</p> <p>19 witness in this case; do you recall that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. And today you understand that you</p> <p>22 are here testifying not as a fact witness,</p> <p>23 but on behalf of Johnson &amp; Johnson as their</p> <p>24 corporate representative, correct?</p> <p>25 A. Yes.</p>	<p>1 Q. Okay.</p> <p>2 MR. C. PLACITELLA: Can you</p> <p>3 please give the witness P-1?</p> <p>4 BY MR. C. PLACITELLA:</p> <p>5 Q. P-1 is the deposition notice for</p> <p>6 this case. And if you can go to the notice</p> <p>7 itself, it asks that Johnson &amp; Johnson</p> <p>8 produce the representative with the most</p> <p>9 knowledge concerning discovery responses</p> <p>10 historically provided by Johnson &amp; Johnson</p> <p>11 and Windsor Minerals concerning the asbestos</p> <p>12 content of talc, Johnson's Baby Powder or</p> <p>13 Shower to Shower sold by Johnson &amp; Johnson,</p> <p>14 Windsor Minerals or Eastern Magnesia Talc</p> <p>15 Company.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 A. That's what it says.</p> <p>20 Q. Are you that person?</p> <p>21 A. Yes, I am.</p> <p>22 Q. Okay. And how is it -- why are you</p> <p>23 the person most qualified to respond to</p> <p>24 this -- to this -- notice?</p> <p>25 MR. BERNARDO: Object to the</p>

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<p>1 form of the question.</p> <p>2 THE WITNESS: In my career with</p> <p>3 Johnson &amp; Johnson, in the specific time</p> <p>4 period, I was the person who would be</p> <p>5 involved in supply -- or helping to supply</p> <p>6 the answers to said interrogatories.</p> <p>7 BY MR. C. PLACITELLA:</p> <p>8 Q. Okay. Now, and you understand that</p> <p>9 you are here to answer questions as Johnson &amp;</p> <p>10 Johnson, the corporation, not Nancy Musco,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And you understand that</p> <p>14 information that we will address includes</p> <p>15 what information Johnson &amp; Johnson had in its</p> <p>16 possession over time concerning the potential</p> <p>17 hazards associated with the talc that it</p> <p>18 sold, correct?</p> <p>19 MR. BERNARDO: Object to the</p> <p>20 form of the question.</p> <p>21 THE WITNESS: I am here to talk</p> <p>22 about the documents associated with this and</p> <p>23 the discovery responses.</p> <p>24 BY MR. C. PLACITELLA:</p> <p>25 Q. So the answer is yes?</p>	<p>1 A. I'm here to talk about the --</p> <p>2 the -- as we said, as it says here in the</p> <p>3 notice. Not here to talk about any dangers</p> <p>4 of talc, because talc used in cosmetic</p> <p>5 application of Johnson's Baby Powder is safe.</p> <p>6 Q. All right. You know that you are</p> <p>7 here to talk about what information Johnson &amp;</p> <p>8 Johnson had in its possession concerning the</p> <p>9 asbestos content of talc and whether that</p> <p>10 information was provided in response to</p> <p>11 discovery in lawsuits historically, correct?</p> <p>12 MR. BERNARDO: Object to the</p> <p>13 form of the question.</p> <p>14 THE WITNESS: Yes, that's</p> <p>15 correct.</p> <p>16 BY MR. C. PLACITELLA:</p> <p>17 Q. Okay. Can you tell me everything</p> <p>18 you did in order to prepare for today's</p> <p>19 deposition?</p> <p>20 A. Yes, I did a lot. I -- most</p> <p>21 important thing is I looked at the documents</p> <p>22 that you presented to me last time to help</p> <p>23 ensure that they had been looked at by the</p> <p>24 company. I looked at depositions, testimony</p> <p>25 of Dr. Hopkins. I spoke to one of the people</p>
Page 16	Page 17
<p>1 responsible for conducting the searches to</p> <p>2 help ensure that we had all the information</p> <p>3 available for you that you requested. And I</p> <p>4 also spoke directly with Dr. Hopkins.</p> <p>5 Q. Okay. And when did you speak to</p> <p>6 Dr. Hopkins?</p> <p>7 A. Last week.</p> <p>8 Q. And what was the substance of your</p> <p>9 conversation with him?</p> <p>10 A. We spoke specifically about the</p> <p>11 documents that you and I had discussed in our</p> <p>12 last deposition.</p> <p>13 Q. Did he tell you that he testified</p> <p>14 in a case that's ongoing in California right</p> <p>15 now?</p> <p>16 A. I know that he is, yes.</p> <p>17 Q. Did you know that he testified in</p> <p>18 that case that the information that you</p> <p>19 supplied in answers to interrogatories was</p> <p>20 inaccurate --</p> <p>21 MR. BERNARDO: Object to form.</p> <p>22 BY MR. C. PLACITELLA:</p> <p>23 Q. -- and incomplete?</p> <p>24 MR. BERNARDO: Object to the</p> <p>25 form of the question and the characterization</p>	<p>1 of Mr. Hopkins' testimony.</p> <p>2 (Reporter clarification.)</p> <p>3 MR. BERNARDO: Of Dr. Hopkins'</p> <p>4 testimony.</p> <p>5 THE WITNESS: I don't know what</p> <p>6 Dr. Hopkins said in his testimony, no.</p> <p>7 BY MR. C. PLACITELLA:</p> <p>8 Q. So you never had a conversation</p> <p>9 where he said under oath before a jury who is</p> <p>10 listening to a case right now that the</p> <p>11 information that you supplied that you swore</p> <p>12 to was true was incomplete and inaccurate --</p> <p>13 MR. BERNARDO: Object.</p> <p>14 BY MR. C. PLACITELLA:</p> <p>15 Q. -- you never knew that?</p> <p>16 MR. BERNARDO: Object to the</p> <p>17 form of the question and the characterization</p> <p>18 of Dr. Hopkins' testimony.</p> <p>19 Do you have the testimony to</p> <p>20 show her --</p> <p>21 MR. C. PLACITELLA: I'm going</p> <p>22 to get there.</p> <p>23 MR. BERNARDO: -- Mr.</p> <p>24 Placitella?</p> <p>25 Okay.</p>

5 (Pages 14 to 17)

Page 18	Page 19
<p>1 THE WITNESS: I did not discuss 2 Dr. Hopkins' testimony that you're referring 3 to. 4 BY MR. C. PLACITELLA: 5 Q. If he was asked specifically about 6 sworn information that you provided under 7 oath in a trial, wouldn't you have hoped as 8 part of your preparation that that's 9 something that he would have told you? 10 A. He and I discussed the specifics of 11 the documents that you had asked for and 12 specifically what's involved in the notice 13 that you provided. 14 Q. So how long did you talk to 15 Dr. Hopkins? 16 A. Close to an hour. 17 Q. Okay. And you went over all of the 18 documents with him? 19 A. I went over specific documents. 20 Q. What documents were those? 21 A. So many documents. They were 22 specific documents that Dr. Hopkins had and 23 that were pertinent to the issues. As I 24 said, the ones that you and I discussed. 25 Q. And when you say the ones you and I</p>	<p>1 discussed, what do you mean by that? 2 A. They were brought up at my last 3 deposition. 4 I wanted to discuss these with 5 Dr. Hopkins to help ensure that he was 6 familiar with them and that he had answered 7 the questions. 8 Q. Okay. And did he tell you that 9 when I deposed him that a chart was created 10 concerning what was in the documents? 11 A. We did not discuss his testimony at 12 all. We discussed those particular 13 documents. 14 Q. Okay. So you spoke with 15 Dr. Hopkins, who is the person -- who was the 16 other person you spoke with? 17 A. Miss Pam Downs (phonetic). 18 Q. And who is she and what was her 19 job? 20 A. She is one of the people 21 responsible for the searches of all of their 22 pertinent documents. 23 Q. Okay. And what was the substance 24 of your discussion with her? 25 A. I wanted to be comfortable in the</p>
Page 20	Page 21
<p>1 way that she conducted the search and just 2 help reassure myself that she had looked in 3 all the different avenues. 4 Q. Approximately how much time have 5 you spent preparing for today's deposition? 6 A. Approximately six, seven days. 7 Q. Six or seven days, eight hours a 8 day? 9 A. Approximately. 10 Q. And you were compensated for that? 11 A. Yes, I was compensated for my time. 12 Q. At what rate? 13 A. \$185 an hour. 14 Q. Okay. And can you tell me 15 specifically what documents you reviewed in 16 preparation for today's deposition? 17 A. As I mentioned earlier, any of the 18 documents that you asked for, made sure that 19 they were provided to you. And anything that 20 had to do with the alleged asbestos content 21 of talc. 22 Q. So you looked at all documents 23 related to asbestos testing for the Johnson &amp; 24 Johnson talc? 25 A. I --</p>	<p>1 MR. BERNARDO: Object to the 2 form of the question. 3 THE WITNESS: I looked at them. 4 I -- I had counsel pull out which ones were 5 pertinent for me, because there's so many for 6 me to go through. It would almost be 7 impossible. I looked at so that I would know 8 which documents were pertinent. 9 BY MR. C. PLACITELLA: 10 Q. Okay. So am I under -- my 11 understanding correct that you began at 12 Johnson &amp; Johnson in approximately 1983? 13 A. 1982. 14 Q. 1982. 15 And when you started there you were 16 the person who worked in -- on Johnson's Baby 17 Powder in the Marketing Department? 18 A. No, I was actually part of 19 regulatory, which was part of Research and 20 Development. 21 Q. Right. 22 And what was your job 23 responsibilities? 24 A. My job responsibilities when I 25 first started was responding to consumers,</p>

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Page 22	Page 23
<p>1 whether it be by letter or phone with any 2 questions, concerns that they had about any 3 of the Johnson's baby products. 4 Q. Including any talc-related product? 5 A. Yes. 6 Q. Okay. And you had that 7 responsibility from 1982 until 2001? 8 A. Approximately. 9 Q. Okay. 10 A. 2000ish, yeah. 11 Q. Okay. And in 2001 you went to work 12 for the R&amp;D Department; is that correct? 13 A. Yes, it was part of the R&amp;D 14 Department. 15 Q. But your job basically stayed the 16 same, although you were in the R&amp;D 17 Department -- 18 A. Some of the same responsibilities, 19 yes. 20 Q. And you were the person in charge 21 of communicating to the public and health 22 care professionals information related to the 23 safety of Johnson's Baby Powder, correct? 24 A. I was one of the people, yes. 25 Q. Okay. You, as I think you</p>	<p>1 indicated, were also the person in charge of 2 gathering information to answer questions 3 that Johnson &amp; Johnson was required to answer 4 fully and honestly when sued over injuries 5 alleged to have occurred from exposure to 6 baby powder, correct? 7 MR. BERNARDO: Object to the 8 form of the question. 9 THE WITNESS: Could you 10 rephrase that, please? 11 BY MR. C. PLACITELLA: 12 Q. Sure. 13 You were the person in charge of 14 gathering information needed to answer 15 questions that were required to answer 16 discovery responses, fully and honestly, when 17 Johnson &amp; Johnson was sued over exposure to 18 talc, correct? 19 A. As part of my responsibilities I 20 would work with counsel to direct them to the 21 appropriate people to answer whatever 22 questions may have been put forth. 23 Q. And those cases involved lung 24 disease, such as cancer and -- lung cancer 25 and ovarian cancer, correct?</p>
Page 24	Page 25
<p>1 A. There were some allegations of 2 that, yes. 3 Q. All right. In fact, you were the 4 point person for gathering discovery for 5 litigation historically at Johnson &amp; Johnson, 6 correct? 7 MR. BERNARDO: Object to the 8 form of the question. 9 THE WITNESS: I did not gather 10 the information. As I said, I -- I helped 11 counsel and told them the people that would 12 be most appropriate to answer their 13 questions. 14 BY MR. C. PLACITELLA: 15 Q. And you started that sometime in 16 the early 1980s? 17 A. Yes. 18 Q. Okay. And you were aware of the 19 records that were used that were available to 20 respond to discovery, correct? 21 MR. BERNARDO: Object to the 22 form of the question. 23 THE WITNESS: Well, there were 24 no specific records. Again, I directed 25 counsel to the appropriate people who would</p>	<p>1 answer based on their expertise or what 2 information they had. 3 BY MR. C. PLACITELLA: 4 Q. And you were aware that Johnson &amp; 5 Johnson was sued many times in cases alleging 6 injury from its talc-related products, 7 correct? 8 MR. BERNARDO: Object to the 9 form of the question. 10 THE WITNESS: I was aware that 11 there were cases, yes. 12 BY MR. C. PLACITELLA: 13 Q. All right. You understood that 14 information that was available to answer 15 questions in one case would be relevant to 16 answer similar questions in other cases, 17 correct? 18 MR. BERNARDO: Object to the 19 form of the question. 20 THE WITNESS: Yes, it could be. 21 BY MR. C. PLACITELLA: 22 Q. Am I correct that the information 23 concerning what happened in prior cases came 24 from the Legal Department and that those 25 files were in the possession of the Legal</p>

7 (Pages 22 to 25)

Page 26	Page 27
<p>1 Department?</p> <p>2 A. Could you rephrase that?</p> <p>3 Q. Sure.</p> <p>4 When you were responding in a -- in</p> <p>5 a case, you knew that the Legal Department</p> <p>6 had information from prior cases, correct?</p> <p>7 MR. BERNARDO: Object to the</p> <p>8 form of the question.</p> <p>9 THE WITNESS: Again, I don't</p> <p>10 know specifically what information the Legal</p> <p>11 Department may have had. But when they</p> <p>12 needed to have a specific answer, I would</p> <p>13 help direct them to the person most</p> <p>14 appropriate to answer that.</p> <p>15 BY MR. C. PLACITELLA:</p> <p>16 Q. All right. And at some point in</p> <p>17 time you became aware of something known as a</p> <p>18 litigation hold, correct?</p> <p>19 A. I'm familiar with that, yes.</p> <p>20 Q. What is a litigation hold?</p> <p>21 A. My understanding of that is when</p> <p>22 our counsel would let us -- anybody in the</p> <p>23 company hold to any documents related to a</p> <p>24 specific legal case.</p> <p>25 Q. Okay. And when is the first time</p>	<p>1 that you became aware that Johnson &amp; Johnson</p> <p>2 had a -- any kind of litigation hold for talc</p> <p>3 cases related to exposure to Johnson &amp;</p> <p>4 Johnson talc products?</p> <p>5 MR. BERNARDO: Object to the</p> <p>6 form of the question.</p> <p>7 THE WITNESS: I don't remember</p> <p>8 any specific dates.</p> <p>9 BY MR. C. PLACITELLA:</p> <p>10 Q. What is the first evidence that you</p> <p>11 have, when I say "you," Johnson &amp; Johnson, as</p> <p>12 to when a litigation hold was first imposed</p> <p>13 in talc-related litigation?</p> <p>14 MR. BERNARDO: Object to the</p> <p>15 form of the question, beyond the scope of the</p> <p>16 notice and what we tendered this witness for.</p> <p>17 You can answer in your personal</p> <p>18 capacity, if you know.</p> <p>19 THE WITNESS: No, I do not</p> <p>20 know.</p> <p>21 BY MR. C. PLACITELLA:</p> <p>22 Q. So you as Johnson &amp; Johnson here to</p> <p>23 talk about the historic discovery responses</p> <p>24 have no idea when a litigation hold was first</p> <p>25 imposed, correct?</p>
Page 28	Page 29
<p>1 MR. BERNARDO: Same objection.</p> <p>2 THE WITNESS: Not the specific</p> <p>3 dates, no.</p> <p>4 BY MR. C. PLACITELLA:</p> <p>5 Q. Okay. So am I correct that the</p> <p>6 person charged with -- well, strike that.</p> <p>7 You understand that discovery is a</p> <p>8 pretrial process where the parties are</p> <p>9 required to provide information relative to</p> <p>10 the allegations and defendant -- and defenses</p> <p>11 asserted in a case?</p> <p>12 A. I understand that discovery may be</p> <p>13 specific questions presented by the</p> <p>14 plaintiffs for the defendants to answer.</p> <p>15 Q. What is your understanding</p> <p>16 concerning Johnson &amp; Johnson's obligations</p> <p>17 when responding truthfully and fully to</p> <p>18 questions posed to it in litigation?</p> <p>19 MR. BERNARDO: Object to the</p> <p>20 form of the question. Call for --</p> <p>21 conclusion.</p> <p>22 THE WITNESS: I fully</p> <p>23 understand that they should and do answer</p> <p>24 truthfully and completely.</p> <p>25 BY MR. C. PLACITELLA:</p>	<p>1 Q. Okay. When asked to provide</p> <p>2 information, am I correct that Johnson &amp;</p> <p>3 Johnson recognizes -- well, let me ask, that</p> <p>4 there is a material difference between</p> <p>5 certifying that there is no evidence</p> <p>6 whatsoever and that there is evidence, but</p> <p>7 that you don't believe the evidence is</p> <p>8 accurate?</p> <p>9 MR. BERNARDO: Object to the</p> <p>10 form of the question.</p> <p>11 THE WITNESS: Could you ask</p> <p>12 that again, please?</p> <p>13 BY MR. C. PLACITELLA:</p> <p>14 Q. Sure.</p> <p>15 You're asked a question about</p> <p>16 whether evidence exists. You understand</p> <p>17 there is a difference, you, Johnson &amp;</p> <p>18 Johnson, about whether the evidence exists at</p> <p>19 all versus that there is evidence, but you</p> <p>20 just don't believe that it's accurate --</p> <p>21 MR. BERNARDO: Object.</p> <p>22 BY MR. C. PLACITELLA:</p> <p>23 Q. -- or reliable?</p> <p>24 MR. BERNARDO: Object to the</p> <p>25 form of the question.</p>

8 (Pages 26 to 29)

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<p>1 BY MR. C. PLACITELLA: 2 Q. Do you understand the difference? 3 A. I'm not sure I understand the 4 question. 5 Q. Okay. So let's try to break it 6 down. 7 When you're asked, Is there any 8 evidence that you got here today by car; 9 what's your understanding of that question? 10 MR. BERNARDO: Object to the 11 form of the question. 12 THE WITNESS: That, you know, 13 the answer that I got here by car. 14 BY MR. C. PLACITELLA: 15 Q. So can there be circumstantial 16 evidence that you got here by car? 17 Do I have to have the car in front 18 of me or the photo of you driving the car? 19 A. If you didn't believe me. 20 Q. Okay. So my question to you is 21 when Johnson &amp; Johnson is asked in discovery, 22 Is there any evidence of asbestos content in 23 Johnson &amp; Johnson talc; what is your 24 understanding as to what's being asked of 25 you?</p>	<p>1 A. You're asking if there's any 2 evidence that there is asbestos in the talc 3 of Johnson's Baby Powder. 4 Q. Right. 5 And what -- and if there is testing 6 related to whether Johnson &amp; Johnson talc 7 contained asbestos, is that evidence in your 8 mind -- 9 MR. BERNARDO: Object. 10 BY MR. C. PLACITELLA: 11 Q. -- to Johnson &amp; Johnson? 12 MR. BERNARDO: Object to the 13 form of the question. 14 THE WITNESS: Any, any evidence 15 would be something, yes. 16 BY MR. C. PLACITELLA: 17 Q. Right. 18 A. If there were. 19 Q. So, for example, if a -- if a test 20 was run to determine whether Johnson's Baby 21 Powder contained asbestos and there were 22 results from that test, that would be 23 evidence, correct? 24 MR. BERNARDO: Object to the 25 form of the question.</p>
Page 32	Page 33
<p>1 THE WITNESS: Yes. 2 BY MR. C. PLACITELLA: 3 Q. Okay. You understand that 4 Johnson &amp; Johnson had a duty to provide 5 accurate and complete information when 6 responding to discovery in talc litigation, 7 correct? 8 MR. BERNARDO: Object to the 9 form of the question. 10 THE WITNESS: Yes. 11 BY MR. C. PLACITELLA: 12 Q. Okay. You understand that if 13 Johnson &amp; Johnson did not provide accurate 14 and complete information, citizens could lose 15 the rights that were given to them to proceed 16 to trial, correct? 17 MR. BERNARDO: Object to the 18 form of the question, calls for a legal 19 conclusion. 20 THE WITNESS: I -- I can't 21 answer that legal-wise. I don't understand 22 that. 23 BY MR. C. PLACITELLA: 24 Q. You understand, you, Johnson &amp; 25 Johnson understood that it was wrong to</p>	<p>1 withhold information with the objective of 2 obtaining dismissals of cases that were filed 3 against Johnson &amp; Johnson, correct? 4 MR. BERNARDO: Object to the 5 form of the question. 6 THE WITNESS: This seems like a 7 legal question and I'm not equipped to answer 8 that. 9 BY MR. C. PLACITELLA: 10 Q. I'm not asking you -- I'm saying 11 you, Johnson &amp; Johnson, not Nancy Musco, 12 understood that it was wrong to withhold 13 information with the objective of obtaining 14 dismissals of cases for lawsuits filed 15 against Johnson &amp; Johnson, correct? 16 A. Again, that's a -- seems to me like 17 a legal conclusion. No. 18 Q. "No" what? 19 A. I can't -- I can't answer that, 20 because I don't know what that means. 21 Q. So you don't know, Johnson &amp; 22 Johnson does not know whether it's wrong to 23 withhold information with the objective of 24 obtaining dismissals of lawsuits, Johnson &amp; 25 Johnson doesn't know that?</p>

9 (Pages 30 to 33)

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<p>1 MR. BERNARDO: Object to the 2 form of the question. 3 THE WITNESS: I cannot comment 4 on any legal conclusions or any legal 5 directions. 6 BY MR. C. PLACITELLA: 7 Q. When you were working on issues 8 concerning the safety of talc, you were 9 repeatedly -- well, let's just -- 10 MR. C. PLACITELLA: Can you 11 give me 412? 12 MR. BERNARDO: Do you have a 13 copy for me? 14 MR. C. PLACITELLA: Yeah, I 15 will, absolutely. 16 Here's one for you, for the 17 record. 18 (Exhibit J&amp;J-412, Handwritten 19 document, is marked for identification.) 20 BY MR. C. PLACITELLA: 21 Q. Now, I'm going to -- what's marked 22 here as Musco-1, do you recall this exhibit 23 from the last time that we were together and 24 I took your deposition? 25 A. I don't recall specifically.</p>	<p>1 Q. Is there -- 2 A. I know that you wrote down some 3 things. 4 Q. Okay. So let me see if I can... 5 See if this refreshes your memory. 6 MR. C. PLACITELLA: Where's 7 your audio? 8 (At which time the following 9 audio recording is played for the witness.) 10 "QUESTION: Did the talc that 11 was used in any J&amp;J Baby Powder product ever 12 contain any amount of asbestos; do you see 13 that? 14 "ANSWER: Yeah, I see that. 15 "QUESTION: That was a question 16 that -- or questions like that that you were 17 called upon to answer as part of your job at 18 Johnson &amp; Johnson, correct? 19 "ANSWER: Yes. 20 "QUESTION: Okay. And that 21 question was raised over and over again by 22 people outside of Johnson &amp; Johnson from 23 almost the time you started working there, 24 correct? 25 "UNIDENTIFIED COUNSEL: Object</p>
Page 36	Page 37
<p>1 to the form of the question. 2 "You can answer. Excuse me. 3 "ANSWER: I know it was a 4 question that we received, yes." 5 (At which time the audio 6 playback is concluded.) 7 BY MR. C. PLACITELLA: 8 Q. Do you recall giving that 9 testimony? 10 MR. BERNARDO: Object to the 11 form of the question and the playing of the 12 prior testimony. 13 THE WITNESS: Yes, I do. 14 (Reporter clarification.) 15 MR. BERNARDO: And the playing 16 of the prior testimony. I'll move my mic. 17 Object to the form of the question and the 18 playing of the prior testimony. 19 BY MR. C. PLACITELLA: 20 Q. Do you recall giving that 21 testimony? 22 A. I did. 23 Q. Is that testimony fair and 24 accurate? 25 A. Yes.</p>	<p>1 Q. Am I correct that the question that 2 was asked of you over and over again when you 3 worked for Johnson &amp; Johnson in one way or 4 another was did the talc that was used in any 5 J&amp;J product ever contain any amount of 6 asbestos? 7 A. We were asked lots of different 8 questions through the years, not specifically 9 always in that form. 10 Q. Do you -- 11 A. But, yes. 12 Q. Okay. And that same question or 13 questions like that was asked over and over 14 in litigation related to asbestos -- strike 15 that. 16 That same question was asked of 17 Johnson &amp; Johnson or questions like that in 18 litigation related to Johnson's Baby Powder, 19 correct? 20 A. Yes, I believe that's the question. 21 Q. Okay. And that was the -- one 22 of -- that was a question that you were the 23 point person for gathering information on to 24 respond to, correct? 25 MR. BERNARDO: Object to the</p>

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<p style="text-align: right;">Page 38</p> <p>1 form of the question.</p> <p>2 THE WITNESS: I worked with</p> <p>3 counsel to provide specific -- help provide</p> <p>4 specific answers to specific questions that</p> <p>5 would be related to a Complaint.</p> <p>6 BY MR. C. PLACITELLA:</p> <p>7 Q. And the answer to the question, Did</p> <p>8 the talc that was used in any Johnson &amp;</p> <p>9 Johnson Baby Powder product ever contain any</p> <p>10 amount of asbestos; when you answer it,</p> <p>11 always was, There is no evidence that</p> <p>12 Johnson's Baby Powder contained any amount of</p> <p>13 asbestos. There never was and there never</p> <p>14 will be.</p> <p>15 That was your response, correct?</p> <p>16 MR. BERNARDO: Object to the</p> <p>17 form of the question.</p> <p>18 THE WITNESS: That's correct.</p> <p>19 BY MR. C. PLACITELLA:</p> <p>20 Q. Okay. And when Johnson &amp; Johnson</p> <p>21 was asked the same question in litigation</p> <p>22 they gave the same response, that is, there</p> <p>23 is no evidence that Johnson's Baby Powder</p> <p>24 contained any amount of asbestos, correct?</p> <p>25 MR. BERNARDO: Object to the</p>	<p style="text-align: right;">Page 39</p> <p>1 form of the question.</p> <p>2 THE WITNESS: That's the</p> <p>3 position of the company, that there's no</p> <p>4 asbestos used in the cosmetic talc of</p> <p>5 Johnson's Baby Powder.</p> <p>6 BY MR. C. PLACITELLA:</p> <p>7 Q. My question is, that was the answer</p> <p>8 that was provided every time the question was</p> <p>9 asked in the context of a lawsuit, correct?</p> <p>10 MR. BERNARDO: Object to the</p> <p>11 form of the question.</p> <p>12 THE WITNESS: I do not know if</p> <p>13 that was the specific answer that was</p> <p>14 provided each time.</p> <p>15 BY MR. C. PLACITELLA:</p> <p>16 Q. All right. You know that when that</p> <p>17 question was asked that Johnson &amp; Johnson</p> <p>18 always took the possession -- took position</p> <p>19 in litigation that there is no evidence that</p> <p>20 Johnson's Baby Powder contained any amount of</p> <p>21 asbestos, correct?</p> <p>22 MR. BERNARDO: Object to the</p> <p>23 form of the question.</p> <p>24 THE WITNESS: The position of</p> <p>25 Johnson &amp; Johnson is that there is no</p>
<p style="text-align: right;">Page 40</p> <p>1 asbestos in the cosmetic talc of Johnson's</p> <p>2 Baby Powder.</p> <p>3 BY MR. C. PLACITELLA:</p> <p>4 Q. So the answer to my question is</p> <p>5 yes?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And when you, Johnson &amp;</p> <p>8 Johnson told the public that there is no</p> <p>9 evidence that Johnson's Baby Powder contained</p> <p>10 any amount of asbestos and there never was</p> <p>11 and there never will be, it was your intent,</p> <p>12 that is, you, Johnson &amp; Johnson, to convey</p> <p>13 that there was zero chance of exposing</p> <p>14 families to asbestos by using Johnson's Baby</p> <p>15 Powder, correct?</p> <p>16 A. The -- the position is that there's</p> <p>17 no asbestos in the cosmetic talc. So</p> <p>18 Johnson's Baby Powder would not be exposing</p> <p>19 anyone to asbestos.</p> <p>20 Q. Your intent was to convey that</p> <p>21 there was zero chance of exposing families to</p> <p>22 asbestos by using Johnson's Baby Powder,</p> <p>23 correct?</p> <p>24 MR. BERNARDO: Object to the</p> <p>25 form of the question.</p>	<p style="text-align: right;">Page 41</p> <p>1 THE WITNESS: Our intent was to</p> <p>2 inform whomever was asking that there is no</p> <p>3 asbestos in the cosmetic talc.</p> <p>4 MR. C. PLACITELLA: I'm going</p> <p>5 to go to video.</p> <p>6 BY MR. C. PLACITELLA:</p> <p>7 Q. I'm going to show you your</p> <p>8 testimony from last time.</p> <p>9 (At which time the following</p> <p>10 audio recording is played for the witness.)</p> <p>11 "QUESTION: And when you had</p> <p>12 these conversations, for example, with the</p> <p>13 mothers and the consumers, your intent was to</p> <p>14 convey to them that there was zero chance of</p> <p>15 exposing their families to asbestos at any</p> <p>16 level using Johnson's Baby Powder, correct?</p> <p>17 "ANSWER: I -- my job was to</p> <p>18 reassure them that they could feel safe and</p> <p>19 comfortable using Johnson's Baby Powder,</p> <p>20 because it does not contain asbestos.</p> <p>21 "QUESTION: Right:</p> <p>22 "So there was zero chance of</p> <p>23 exposing their families to asbestos by using</p> <p>24 Johnson's Baby Powder, that was your intent</p> <p>25 to convey to them, correct?</p>

11 (Pages 38 to 41)

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<p>1 "ANSWER: That's correct. 2 "QUESTION: Okay." 3 (At which time the audio 4 playback is concluded.) 5 BY MR. C. PLACITELLA: 6 Q. Do you recall giving that 7 testimony? 8 A. I see that's what I said. 9 Q. Okay. 10 Am I correct that you're aware that 11 Johnson &amp; Johnson also told the Federal 12 Government there was never any evidence of 13 asbestos in Johnson's Baby Powder? 14 MR. BERNARDO: Object to the 15 form of the question, beyond the scope of the 16 notice. 17 You can answer in your 18 individual capacity. 19 THE WITNESS: I cannot speak 20 about specific conversations, but there is no 21 asbestos in the cosmetic talc. 22 BY MR. C. PLACITELLA: 23 Q. My question was, you knew that 24 Johnson &amp; Johnson told the Federal Government 25 there was never any evidence of asbestos in</p>	<p>1 Johnson's Baby Powder, correct? 2 MR. BERNARDO: Same objection. 3 THE WITNESS: I can't answer 4 that. 5 MR. C. PLACITELLA: Okay. Go 6 back to the video, please. 7 That's fine. 8 BY MR. C. PLACITELLA: 9 Q. Do you know what the National 10 Toxicology -- 11 THE VIDEOTAPE OPERATOR: You 12 have to let me... 13 MR. C. PLACITELLA: Go ahead. 14 THE VIDEOTAPE OPERATOR: Go 15 ahead. 16 BY MR. C. PLACITELLA: 17 Q. Do you know what the National 18 Toxicology Program was? 19 A. Yes. I -- 20 Q. What was that? 21 A. I'm familiar with it. 22 Q. Was that a branch of the Federal 23 Government? 24 A. No, it was not. 25 Q. Had nothing to do with the Federal</p>
Page 44	Page 45
<p>1 Government? 2 A. It worked with the Federal 3 Government, yes, but I -- I can't tell you 4 all the specifics of it. 5 Q. Okay. Did you tell the National 6 Toxicology Program that there was no evidence 7 of asbestos in Johnson's Baby Powder? 8 MR. BERNARDO: Object to the 9 form of the question, beyond the scope of the 10 notice. 11 You can answer in your 12 individual capacity. 13 THE WITNESS: I'm -- there were 14 meetings with the NTP, yes. 15 BY MR. C. PLACITELLA: 16 Q. And you told them, you, Johnson &amp; 17 Johnson, told the NTP that there was no 18 evidence whatsoever of asbestos in Johnson's 19 Baby Powder, correct? 20 MR. BERNARDO: Object to the 21 form of the question. 22 THE WITNESS: My understanding 23 that we're to talk about today the things 24 that you specifically put in the notice. I 25 believe we talked about that last time we</p>	<p>1 met. 2 BY MR. C. PLACITELLA: 3 Q. Yeah. And what was your answer? 4 MR. BERNARDO: Object to the 5 form of the question, asked and answered. 6 THE WITNESS: Whatever you have 7 on record. 8 BY MR. C. PLACITELLA: 9 Q. Okay. Well, let's see if this 10 refreshes your memory. 11 MR. BERNARDO: Before we 12 refresh her memory, let me just interject. 13 Mr. Placitella, the notice is 14 very clear what the scope of this deposition 15 is. And statements made to the Federal 16 Government is well outside the scope of this 17 notice. This witness is being prepared to 18 testify -- 19 MR. C. PLACITELLA: Well, we'll 20 let a judge decide that, Mr. Bernardo. 21 MR. BERNARDO: Let me finish my 22 objection. 23 This witness is not being 24 tendered to testify on behalf of the company 25 with respect to statements to the Federal</p>

12 (Pages 42 to 45)

Page 46	Page 47
<p>1 Government.</p> <p>2 I'm trying not to interrupt the</p> <p>3 deposition and letting her answer if she</p> <p>4 knows in her individual capacity, but I just</p> <p>5 want to make sure that my question is clear.</p> <p>6 And you're absolutely right, a judge can</p> <p>7 decide it.</p> <p>8 BY MR. C. PLACITELLA:</p> <p>9 Q. When you say "individual capacity,"</p> <p>10 you were working for Johnson &amp; Johnson on the</p> <p>11 National Toxicology Project, were you not?</p> <p>12 A. I was not specifically working on</p> <p>13 the project, that was part of my</p> <p>14 responsibilities.</p> <p>15 Q. Right.</p> <p>16 Well, let me show you your</p> <p>17 testimony from the last time.</p> <p>18 THE VIDEOTAPE OPERATOR: Stand</p> <p>19 by.</p> <p>20 (At which time the following</p> <p>21 audio recording is played for the witness.)</p> <p>22 "QUESTION: My question to you</p> <p>23 was, did you know that one of the primary</p> <p>24 bases for battling the issue of talc before</p> <p>25 the National Toxicology Project was the</p>	<p>1 position asserted that there was never any</p> <p>2 evidence of asbestos in the talc used in</p> <p>3 Johnson's Baby Powder?</p> <p>4 "UNIDENTIFIED COUNSEL: Object</p> <p>5 to the form of the question.</p> <p>6 "QUESTION: Just asking if you</p> <p>7 know. It's not a fight.</p> <p>8 "UNIDENTIFIED COUNSEL: Well,</p> <p>9 it's a -- it's a hard question to follow, but</p> <p>10 you can answer if you understand it.</p> <p>11 "ANSWER: Well, the basis was</p> <p>12 that there's no asbestos in the talc used in</p> <p>13 Johnson's Baby Powder."</p> <p>14 (At which time the audio</p> <p>15 playback is concluded.)</p> <p>16 BY MR. C. PLACITELLA:</p> <p>17 Q. Do you recall giving that</p> <p>18 testimony?</p> <p>19 MR. BERNARDO: Same objection.</p> <p>20 THE WITNESS: That's -- that's</p> <p>21 my voice, yes.</p> <p>22 BY MR. C. PLACITELLA:</p> <p>23 Q. Okay. Now, based upon your</p> <p>24 research and knowledge, when does Johnson &amp;</p> <p>25 Johnson say that the first lawsuit was filed</p>
Page 48	Page 49
<p>1 against it alleging injury from exposure to</p> <p>2 talc?</p> <p>3 MR. BERNARDO: Object to the</p> <p>4 form of the question.</p> <p>5 BY MR. C. PLACITELLA:</p> <p>6 Q. When was the first lawsuit filed?</p> <p>7 A. My recollection, in the late '90s.</p> <p>8 Q. It's your belief that the first</p> <p>9 lawsuit alleging injury from exposure to talc</p> <p>10 was the late '90s?</p> <p>11 A. I can't give you exact dates when</p> <p>12 any lawsuits were filed.</p> <p>13 Q. Okay. I'm not asking you, Nancy</p> <p>14 Musco. I'm asking you, Johnson &amp; Johnson.</p> <p>15 When was the first lawsuit filed against you,</p> <p>16 Johnson &amp; Johnson, alleging injury from</p> <p>17 exposure to talc sold by Johnson &amp; Johnson?</p> <p>18 MR. BERNARDO: Object to the</p> <p>19 form of the question, beyond the scope of the</p> <p>20 notice.</p> <p>21 You can answer in your</p> <p>22 individual capacity, if you know.</p> <p>23 THE WITNESS: Do not know.</p> <p>24 BY MR. C. PLACITELLA:</p> <p>25 Q. Okay. When was the -- Johnson --</p>	<p>1 when was the first lawsuit filed against</p> <p>2 Johnson &amp; Johnson alleging injury from</p> <p>3 exposure to talc sourced by mines owned by</p> <p>4 Johnson &amp; Johnson?</p> <p>5 MR. BERNARDO: Same objection.</p> <p>6 THE WITNESS: Again, I cannot</p> <p>7 give you dates.</p> <p>8 BY MR. C. PLACITELLA:</p> <p>9 Q. Did you do any research or speak to</p> <p>10 anybody to find out when the first lawsuits</p> <p>11 relating to baby powder were filed against</p> <p>12 Johnson &amp; Johnson?</p> <p>13 MR. BERNARDO: Same objection.</p> <p>14 THE WITNESS: Not specific</p> <p>15 dates, no.</p> <p>16 BY MR. C. PLACITELLA:</p> <p>17 Q. Why not?</p> <p>18 MR. BERNARDO: Same objection.</p> <p>19 THE WITNESS: Any of the</p> <p>20 research that I did in preparation today was</p> <p>21 specifically for the information that is</p> <p>22 noted in the -- the -- the notice. I didn't</p> <p>23 get into specific dates.</p> <p>24 BY MR. C. PLACITELLA:</p> <p>25 Q. Well, but the notice asks for your</p>

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<p>1 information on your historical responses. So 2 how can you figure out what the information 3 was on historical responses if you don't know 4 when the first lawsuit was filed? 5 A. Because it was -- my concentration 6 was on the responses, not on specific dates. 7 Q. Okay. Well, let me ask you this, 8 do you know how John -- Johnson &amp; Johnson 9 Corporate was kept in the loop concerning 10 lawsuits involving baby powder? 11 MR. BERNARDO: Object to the 12 form of the question. 13 Again, I'm going to renew my 14 objection. Chris, I'm trying not to be 15 obstructive this early in the deposition, but 16 this is really well beyond what we understood 17 from the words in the notice the scope of 18 this deposition was to be. 19 But if you know that in your 20 individual capacity, please go ahead and 21 answer. 22 THE WITNESS: I would assume 23 that they would be filed with the -- with the 24 Law Department in the company. 25 BY MR. C. PLACITELLA:</p>	<p>1 Q. Well, who was in charge of the 2 litigation involving Johnson &amp; Johnson talc 3 products at Johnson &amp; Johnson? 4 MR. BERNARDO: Same objection. 5 THE WITNESS: Different people. 6 BY MR. C. PLACITELLA: 7 Q. Well, who's the person that you 8 reported to when you -- when you were working 9 on the cases? 10 MR. BERNARDO: Object to the 11 form of the question, same objection. 12 THE WITNESS: I did not report 13 to a specific person. 14 BY MR. C. PLACITELLA: 15 Q. So as you sit here testifying on 16 behalf of Johnson &amp; Johnson, it's your 17 testimony that you don't know who was in 18 charge of the talc litigation inside of 19 Johnson &amp; Johnson? 20 MR. BERNARDO: Object to the 21 form of the question. And this witness is 22 not being tendered to testify as to who was 23 in charge of litigation or any other 24 litigation matters, other than the discovery 25 responses.</p>
Page 52	Page 53
<p>1 THE WITNESS: As I said, there 2 were -- there were different people. 3 BY MR. C. PLACITELLA: 4 Q. Well, what people do you remember? 5 A. I could give you names, but, again, 6 I didn't come prepared to talk about 7 different names. 8 Q. Well, give me the names. 9 A. One of the lawyers was John 10 O'Shaughnessy. 11 Q. Okay. Did you have interaction 12 with John O'Shaughnessy concerning discovery 13 responses in talc-related cases? 14 MR. BERNARDO: Object to the 15 form of the question. 16 And go ahead and answer, but 17 just please be mindful of privileged 18 communications. You can answer the question. 19 THE WITNESS: Mr. O'Shaughnessy 20 and I would have conversations, yes. 21 BY MR. C. PLACITELLA: 22 Q. And what was his role? 23 MR. BERNARDO: Object to the 24 form of the question. 25 THE WITNESS: I don't know his</p>	<p>1 specific role. 2 BY MR. C. PLACITELLA: 3 Q. Was he general counsel at the time? 4 MR. BERNARDO: Object to the 5 form of the question. 6 THE WITNESS: I already told 7 you, I don't know his exact title or his 8 role. 9 BY MR. C. PLACITELLA: 10 Q. Who was the person, if you know -- 11 well, you should know, who was the person in 12 charge of gathering evidence to supply 13 answers to discovery in talc cases involving 14 Johnson &amp; Johnson? 15 A. There'd be many different people 16 involved in that. 17 Q. But who was the person in charge? 18 A. I don't know who the person in 19 charge was. We would prepare questions 20 accordingly and we were working with counsel. 21 Q. So was it the lawyer that was in 22 charge? 23 MR. BERNARDO: Object to the 24 form of the question. 25 BY MR. C. PLACITELLA:</p>

14 (Pages 50 to 53)

Page 54	Page 55
<p>1 Q. Was it Mr. O'Shaughnessy the one 2 that was in charge? 3 A. I don't think it's a question of in 4 charge. We all collaborated. As I told you 5 earlier, that I worked with Mr. O'Shaughnessy 6 to help direct him to appropriate people. 7 Q. You say "we all collaborated," 8 who's "we all"? 9 A. A lot of different people in the 10 company. 11 Q. So you don't have any names? 12 A. It would depend on the specific 13 questions asked. 14 Q. So you don't remember any of the 15 names? 16 A. I can tell you about different 17 names. They'd be different names at 18 different times. 19 Q. Okay. When the evidence was 20 gathered, where was it stored? 21 MR. BERNARDO: Object to the 22 form of the question. 23 BY MR. C. PLACITELLA: 24 Q. In responding to discovery, where 25 was the evidence stored?</p>	<p>1 MR. BERNARDO: Object to the 2 form of the question. 3 THE WITNESS: There would not 4 necessarily be evidence that was gathered. 5 It was in many times the form of responses 6 from individual person that might be most 7 knowledgeable. So there was no particular 8 evidence that related to each question. 9 BY MR. C. PLACITELLA: 10 Q. Well, you never turned over any 11 evidence in response to discovery? 12 A. That was not my role. And as I 13 said earlier, counsel would have 14 conversations with the appropriate people. 15 And there's -- their answers were based on 16 their own expertise. 17 Q. My question is, you're here for -- 18 as Johnson &amp; Johnson, not Nancy Musco. And 19 I'm asking you, Johnson &amp; Johnson, where did 20 you store the evidence that was gathered in 21 order to respond to discovery in talc-related 22 cases? 23 MR. BERNARDO: Object to the 24 form of the question, already answered. 25 THE WITNESS: I think it's</p>
Page 56	Page 57
<p>1 important for you to understand that there's 2 not necessarily a pile of evidence that goes 3 with each question. 4 Those questions are responded 5 to by the person most knowledgeable of that 6 area, which is based on their experience, 7 their expertise, years of it. 8 BY MR. C. PLACITELLA: 9 Q. Listen to my question. 10 When evidence was gathered up, 11 physical evidence, where was it stored within 12 Johnson &amp; Johnson when it was used to respond 13 to discovery in litigation? 14 MR. BERNARDO: Object to the 15 form of the question, asked and answered 16 twice already. 17 THE WITNESS: I'm trying to 18 answer your question that there was not 19 evidence or piles of information, papers to 20 go with the responses. Those were based on 21 the individuals' expertise. 22 This is what they did all the 23 time. 24 BY MR. C. PLACITELLA: 25 Q. So, as you sit here today, you have</p>	<p>1 no information that Johnson &amp; Johnson 2 actually turned over any documentary evidence 3 in any talc-related case? 4 MR. BERNARDO: Object to the 5 form of the question. 6 THE WITNESS: What I was 7 responding to were the -- the process that 8 we -- how we prepared answers for specific 9 questions and interrogatories. And there's 10 no hard evidence to go with each question. 11 BY MR. C. PLACITELLA: 12 Q. Well, was there hard evidence with 13 any of the questions that you recall that 14 you've researched? 15 A. I don't recall that there were. 16 Q. Okay. And after the discovery 17 responses were provided, where were those 18 discovery responses stored at Johnson &amp; 19 Johnson? 20 MR. BERNARDO: Object to the 21 form of the question. 22 THE WITNESS: Most probably 23 with the Complaint file. 24 BY MR. C. PLACITELLA: 25 Q. And where was that?</p>

15 (Pages 54 to 57)

Page 58	Page 59
<p>1 A. It could be with the Legal 2 Department. 3 Q. Who was in charge of overseeing the 4 Complaint file? 5 MR. BERNARDO: Object to the 6 form of the question. 7 THE WITNESS: I would assume it 8 would be, you know, the Legal Department, but 9 I don't know specific person, the files. 10 BY MR. C. PLACITELLA: 11 Q. When Johnson &amp; Johnson -- I just 12 want to be clear, when Johnson &amp; Johnson was 13 sued in a talc-related case, is it Johnson &amp; 14 Johnson's testimony that no physical evidence 15 was ever gathered and turned over to the 16 Plaintiffs in a lawsuit, as far as your 17 research demonstrated? 18 MR. BERNARDO: Object, object 19 to the form of the question and 20 characterization of her prior testimony. 21 THE WITNESS: If there had been 22 specific documents that were requested, they 23 would be made available, yes. 24 BY MR. C. PLACITELLA: 25 Q. And where would those documents</p>	<p>1 then be stored after they were made 2 available? 3 A. They could be stored in different 4 places. 5 Q. Where were they stored? 6 A. If there was -- 7 MR. BERNARDO: Object to the 8 form of the question. 9 THE WITNESS: If there were 10 documents, they could be stored in a legal -- 11 internally in a legal department or maybe 12 with outside counsel. 13 BY MR. C. PLACITELLA: 14 Q. Okay. Now, did you understand that 15 Johnson &amp; Johnson was involved -- strike 16 that. 17 Am I correct that Johnson &amp; Johnson 18 was sued in talc cases that involved both 19 industrial talc and cosmetic talc? 20 A. Yes. 21 Q. And you understand that the 22 cosmetic and industrial talcs came from the 23 same mine? 24 MR. BERNARDO: Object to the 25 form of the question.</p>
Page 60	Page 61
<p>1 THE WITNESS: I know they can 2 come from the same mine, but not necessarily 3 the same location. 4 BY MR. C. PLACITELLA: 5 Q. So do you understand, for example, 6 that the talc that was used in Johnson's Baby 7 Powder came from the same mine that 8 industrial talc came from that was sold by 9 Johnson &amp; Johnson? 10 MR. BERNARDO: Object to the 11 form of the question. Again, outside the 12 scope of the notice and what this witness is 13 being tendered for. 14 But if you know you can answer 15 in your individual capacity. 16 THE WITNESS: I can't get into 17 industrial talc, because I'm here to talk 18 about cosmetic talc, as set forth in the 19 notice. 20 BY MR. C. PLACITELLA: 21 Q. Well, you understand you provided 22 discovery responses that indicate that the 23 industrial talc and the cosmetic talc came 24 from the exact same source, correct? 25 MR. BERNARDO: Object to the</p>	<p>1 form of the question. 2 THE WITNESS: I'm here today 3 to -- you know, as said in the notice, to 4 talk about cosmetic talk. 5 BY MR. C. PLACITELLA: 6 Q. So the -- what's the answer to my 7 question? 8 You understand that Johnson &amp; 9 Johnson provided discovery responses 10 indicating that the cosmetic and the 11 industrial talc came from the exact same 12 mine -- 13 MR. BERNARDO: Object. 14 BY MR. C. PLACITELLA: 15 Q. -- correct? 16 MR. BERNARDO: Object to the 17 form of the question. 18 If there's a specific response 19 to show the witness, I think that would make 20 this process quicker, and easier and more 21 accurate. 22 MR. C. PLACITELLA: Please 23 don't, don't do that. 24 MR. BERNARDO: Please don't 25 do --</p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 62</p> <p>1 MR. C. PLACITELLA: It's not --</p> <p>2 MR. BERNARDO: -- what you're</p> <p>3 doing.</p> <p>4 MR. C. PLACITELLA: It's not --</p> <p>5 it's not proper under our rules. You're here</p> <p>6 under pro hac vice admission. Please don't</p> <p>7 do that. Okay?</p> <p>8 Your -- your responses are to</p> <p>9 form and for form only.</p> <p>10 MR. BERNARDO: Well --</p> <p>11 MR. C. PLACITELLA: Otherwise</p> <p>12 we'll get the judge on the phone and we'll</p> <p>13 deal with you. Okay?</p> <p>14 MR. BERNARDO: That's fine.</p> <p>15 MR. C. PLACITELLA: All right.</p> <p>16 MR. BERNARDO: But --</p> <p>17 MR. C. PLACITELLA: Can you</p> <p>18 read my question back, please?</p> <p>19 (At which time the following</p> <p>20 question is read:</p> <p>21 "QUESTION: You understand that</p> <p>22 Johnson &amp; Johnson provided discovery</p> <p>23 responses indicating that the cosmetic and</p> <p>24 the industrial talc came from the exact same</p> <p>25 mine?"</p>	<p style="text-align: right;">Page 63</p> <p>1 THE WITNESS: I -- I --</p> <p>2 MR. BERNARDO: Object to the</p> <p>3 form of the question.</p> <p>4 THE WITNESS: I don't know</p> <p>5 that, no.</p> <p>6 BY MR. C. PLACITELLA:</p> <p>7 Q. Do you -- do you -- have you ever</p> <p>8 heard of the Hammondsville mine?</p> <p>9 A. I have heard of it, yes.</p> <p>10 Q. You understand that that was a</p> <p>11 source of talc for Johnson's Baby Powder?</p> <p>12 A. I believe so, yes.</p> <p>13 Q. Do you understand that that was</p> <p>14 also a source of talc for industrial talc</p> <p>15 sold by Johnson &amp; Johnson?</p> <p>16 MR. BERNARDO: Object to the</p> <p>17 form of the question.</p> <p>18 THE WITNESS: Again, it may</p> <p>19 have been. I'm not the authority on anything</p> <p>20 about the mines.</p> <p>21 BY MR. C. PLACITELLA:</p> <p>22 Q. Okay. Have you ever heard of the</p> <p>23 Johnson mine?</p> <p>24 A. Yes, I have.</p> <p>25 Q. Do you understand that that was a</p>
<p style="text-align: right;">Page 64</p> <p>1 source of cosmetic talc for Johnson's Baby</p> <p>2 Powder?</p> <p>3 MR. BERNARDO: Object to the</p> <p>4 form of the question.</p> <p>5 THE WITNESS: I believe so.</p> <p>6 BY MR. C. PLACITELLA:</p> <p>7 Q. Now, you understand that the</p> <p>8 possibility that Johnson &amp; Johnson was likely</p> <p>9 to -- was going to be sued over Johnson &amp;</p> <p>10 Johnson's baby powder dated back to the</p> <p>11 1960s, correct?</p> <p>12 A. Could you rephrase --</p> <p>13 MR. BERNARDO: Object --</p> <p>14 THE WITNESS: -- that question?</p> <p>15 MR. BERNARDO: Object to the</p> <p>16 form of the question.</p> <p>17 BY MR. C. PLACITELLA:</p> <p>18 Q. The possibility of facing lawsuits</p> <p>19 involving Johnson &amp; Johnson was recognized by</p> <p>20 Johnson &amp; Johnson going back to the 1960s,</p> <p>21 correct?</p> <p>22 MR. BERNARDO: Object to the</p> <p>23 form of the question, beyond the scope of the</p> <p>24 notice.</p> <p>25 You can answer in your</p>	<p style="text-align: right;">Page 65</p> <p>1 individual capacity, if you know.</p> <p>2 THE WITNESS: I don't know.</p> <p>3 MR. C. PLACITELLA: Can you</p> <p>4 give me number 8?</p> <p>5 (Exhibit J&amp;J-8, April 15, 1969</p> <p>6 Memo, is marked for identification.)</p> <p>7 MR. BERNARDO: Are these marked</p> <p>8 as exhibits already, Chis? Already marked --</p> <p>9 MR. C. PLACITELLA: Yeah, I've</p> <p>10 premarked.</p> <p>11 MR. BERNARDO: Okay, great.</p> <p>12 And what is -- what number is</p> <p>13 this?</p> <p>14 MR. C. PLACITELLA: This is</p> <p>15 J&amp;J-8.</p> <p>16 MR. BERNARDO: Okay.</p> <p>17 MR. C. PLACITELLA: It's an</p> <p>18 April 15, 1969 memo on Johnson &amp; Johnson</p> <p>19 stationery from Dr. Thompson.</p> <p>20 BY MR. C. PLACITELLA:</p> <p>21 Q. Do you know who Dr. Thompson was?</p> <p>22 A. No, I do not.</p> <p>23 Q. You don't know that he was the</p> <p>24 Medical Director of Johnson &amp; Johnson at any</p> <p>25 point in time?</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 A. Other than I see MD after his name, 2 I did not know that. 3 Q. What about Mr. Ashton, do you know 4 who he was? 5 A. I believe he worked for the 6 company, yes. 7 Q. Do you know that he worked for the 8 company on talc? 9 A. I know that. 10 Q. Do you know he worked on talc 11 lawsuits? 12 MR. BERNARDO: Object to the 13 form of the question. 14 THE WITNESS: I do not know 15 that specifically, no. 16 BY MR. C. PLACITELLA: 17 Q. Do you know that he was known in 18 the company as Mr. Talc? 19 A. No. 20 MR. BERNARDO: Object to the 21 form of the -- okay. 22 BY MR. C. PLACITELLA: 23 Q. Okay. You go to the second page -- 24 where Dr. Thompson writes, Since the usage of 25 these products is so widespread, and the</p>	<p style="text-align: right;">Page 67</p> <p>1 existence of pulmonary disease is increasing, 2 it is not inconceivable that we could become 3 involved in litigation in which pulmonary 4 fibrosis or other changes might be rightfully 5 or wrongfully attributed to inhalation of our 6 powder formulations. It might be that 7 someone in the Law Department should be 8 consulted with regard to the defensibility of 9 our position in the event that such a 10 situation could ever arise. 11 Is this the first time you ever 12 heard that? 13 MR. BERNARDO: Object to the 14 form of the question. 15 THE WITNESS: I have read this 16 before. 17 BY MR. C. PLACITELLA: 18 Q. You did? 19 A. Mm-hmm. 20 Q. Okay. And in what context? 21 A. In my preparation for this 22 deposition. 23 Q. Okay. And why did you look at this 24 in preparation for today's deposition? 25 A. Because these are a part of the</p>
<p style="text-align: right;">Page 68</p> <p>1 documents concerning the content of asbestos. 2 Q. Okay. And do you know how long 3 after Dr. Thompson predicted that Johnson &amp; 4 Johnson would be sued in a baby powder case 5 or a talc case Johnson &amp; Johnson was actually 6 sued for the first time? 7 MR. BERNARDO: Object to the 8 form of the question. 9 THE WITNESS: No, I do not. 10 BY MR. C. PLACITELLA: 11 Q. Okay. Do you understand that when 12 Johnson &amp; Johnson is sued over a product that 13 it manufactures that it's put on notice that 14 people were making complaints in a court of 15 law that they believe they were injured from 16 those products? 17 MR. BERNARDO: Object to the 18 form of the question. 19 THE WITNESS: I believe that's 20 the process, yes. 21 BY MR. C. PLACITELLA: 22 Q. Okay. When that happened do you 23 know whether there was a reporting 24 requirement for Johnson &amp; Johnson to provide 25 that information to its auditors or its</p>	<p style="text-align: right;">Page 69</p> <p>1 insurers? 2 MR. BERNARDO: Object to the 3 form of the question. 4 Chris, we're just getting so 5 beyond the scope of the notice. You know, 6 maybe we talk at a break, because maybe we do 7 need to get Judge Viscomi on the phone -- 8 MR. C. PLACITELLA: Sure. 9 MR. BERNARDO. This deposition 10 is not about legal duties, legal holds. This 11 deposition, as we understood it, is about 12 written responses to discovery. And this 13 witness is being tendered for that. I'm 14 allowing her if she knows the answers in her 15 individual capacity. But I just want to make 16 it very clear, we are not designating her as 17 the corporate representative on these topics. 18 MR. C. PLACITELLA: Well, 19 actually, when we were in the judge's 20 chambers and Mr. Guard (phonetic) was there, 21 the judge specifically told Mr. Guard, he 22 saw -- she saw this deposition as relevant to 23 the issue of spoliation, in addition to the 24 notice. So... And we're going to talk about 25 that.</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 MR. BERNARDO: Okay. We will.</p> <p>2 MR. C. PLACITELLA: Okay.</p> <p>3 BY MR. C. PLACITELLA:</p> <p>4 Q. So when is the first discovery</p> <p>5 response, what year was that from that you</p> <p>6 reviewed in preparing for today's deposition?</p> <p>7 A. I don't recall the exact years.</p> <p>8 Q. Well, do you have them with you?</p> <p>9 A. Yes, we have -- I -- I had asked</p> <p>10 counsel to do a chart so that I could</p> <p>11 remember, but I don't have it in front of me</p> <p>12 right now.</p> <p>13 Q. Okay.</p> <p>14 MR. C. PLACITELLA: Can -- do</p> <p>15 we have the chart and I --</p> <p>16 MR. BERNARDO: Yeah.</p> <p>17 MR. C. PLACITELLA: -- can take</p> <p>18 a look at it.</p> <p>19 MR. BERNARDO: And, Chris,</p> <p>20 when -- I don't want to interrupt your</p> <p>21 questioning, but we've been going for about</p> <p>22 an hour. When you're at a breaking point,</p> <p>23 just let us know.</p> <p>24 MR. C. PLACITELLA: Mm-hmm.</p> <p>25 MR. BERNARDO: Because I also</p>	<p style="text-align: right;">Page 71</p> <p>1 think we ought to discuss this off the</p> <p>2 record --</p> <p>3 MR. C. PLACITELLA: Mm-hmm.</p> <p>4 MR. BERNARDO: -- so we can</p> <p>5 have some understanding here.</p> <p>6 MR. C. PLACITELLA: Why don't</p> <p>7 we mark this. Do you have an extra copy?</p> <p>8 MR. BERNARDO: Can probably get</p> <p>9 something copied at a break.</p> <p>10 MR. C. PLACITELLA: Sure.</p> <p>11 (Exhibit P-2, Chart, is marked</p> <p>12 for identification.)</p> <p>13 MR. C. PLACITELLA: I'll put it</p> <p>14 over here. Can you switch this to Elmo?</p> <p>15 THE VIDEOTAPE OPERATOR: Yes.</p> <p>16 Stand by.</p> <p>17 BY MR. C. PLACITELLA:</p> <p>18 Q. So --</p> <p>19 MR. BERNARDO: I'm sorry. What</p> <p>20 number is this marked as?</p> <p>21 THE COURT REPORTER: P-2.</p> <p>22 MR. C. PLACITELLA: This is</p> <p>23 marked P-2. It was just handed to me by</p> <p>24 counsel.</p> <p>25 BY MR. C. PLACITELLA:</p>
<p style="text-align: right;">Page 72</p> <p>1 Q. Can you tell me what this is and</p> <p>2 why it was prepared?</p> <p>3 A. I had asked counsel to prepare this</p> <p>4 for me, just to really satisfy my curiosity</p> <p>5 of the cases that you had cited in your</p> <p>6 notice.</p> <p>7 Q. When you say "curiosity," what were</p> <p>8 you curious about?</p> <p>9 A. I wanted to know specifically what</p> <p>10 the injuries were that were alleged in these</p> <p>11 Complaints, similar to what I would do when I</p> <p>12 worked at the company.</p> <p>13 Q. Okay. And the first record you</p> <p>14 found of a Complaint involving baby powder</p> <p>15 was the Gambino case in 1983?</p> <p>16 MR. BERNARDO: Object to the</p> <p>17 form of the question.</p> <p>18 THE WITNESS: No, these --</p> <p>19 MR. BERNARDO: Characterization</p> <p>20 of her prior testimony.</p> <p>21 THE WITNESS: These were the</p> <p>22 list of the Complaints that you had mentioned</p> <p>23 in your notice.</p> <p>24 BY MR. C. PLACITELLA:</p> <p>25 Q. Well, what was the first record</p>	<p style="text-align: right;">Page 73</p> <p>1 that you found of a lawsuit involving talc or</p> <p>2 Johnson's Baby Powder?</p> <p>3 MR. BERNARDO: Object to the</p> <p>4 form of the question.</p> <p>5 THE WITNESS: These were all</p> <p>6 lawsuits.</p> <p>7 I actually was able to review</p> <p>8 interrogatories for both Shelby and then</p> <p>9 there's a second page of Krushinski.</p> <p>10 BY MR. C. PLACITELLA:</p> <p>11 Q. That wasn't my question.</p> <p>12 My question is, what is the first</p> <p>13 record that you found concerning a -- or that</p> <p>14 you reviewed in terms of date or a year of a</p> <p>15 lawsuit involving talc sold by Johnson &amp;</p> <p>16 Johnson?</p> <p>17 Is it 1983?</p> <p>18 MR. BERNARDO: Object to the</p> <p>19 form of the question.</p> <p>20 THE WITNESS: Well, that's the</p> <p>21 year, that first year that's mentioned here,</p> <p>22 yes.</p> <p>23 BY MR. C. PLACITELLA:</p> <p>24 Q. So the answer is yes?</p> <p>25 MR. BERNARDO: Object to the</p>

<p style="text-align: right;">Page 74</p> <p>1 form of the question. 2 THE WITNESS: Yes, it would be 3 1983. 4 MR. C. PLACITELLA: Okay. So 5 can you... 6 (Exhibit J&amp;J-486, Privilege 7 log, is marked for identification.) 8 BY MR. C. PLACITELLA: 9 Q. Now, I'm going to show you what's 10 been marked Johnson &amp; Johnson-486. I'll give 11 it to your attorney first. 12 MR. BERNARDO: And I'll object 13 to this and state that this witness is not 14 being tendered to testify as to what I 15 believe is a privilege log. 16 BY MR. C. PLACITELLA: Right. 17 And I'm going to tell you which 18 I -- this is -- this is the privilege log, an 19 excerpt from the privilege log supplied by 20 Johnson &amp; Johnson in these cases. And what 21 we did is we sorted it by date involving 22 lawsuits related to baby powder. 23 BY MR. C. PLACITELLA: 24 Q. Can you take a look at that? 25 MR. BERNARDO: Same objection.</p>	<p style="text-align: right;">Page 75</p> <p>1 BY MR. C. PLACITELLA: 2 Q. And you see that the first, the 3 first date here is, at least on this exhibit, 4 is 2/10/1971; do you see that? 5 MR. BERNARDO: Can you see it 6 on there? 7 THE WITNESS: I see that it's 8 highlighted here. 9 BY MR. C. PLACITELLA: 10 Q. And the description says, 11 Attachment to letter from counsel to client 12 regarding talc samples in connection with 13 ongoing and anticipated litigation. 14 Do you see that? 15 A. I see that's highlighted here. 16 Q. Do you see -- do you see on the 17 next one there's another entry, 4/9/1971, and 18 it talks about, Attachment by counsel 19 pursuant to pending and anticipated 20 litigation regarding Johnson's Baby Powder. 21 Do you see that? 22 MR. BERNARDO: Object to the 23 form of the question. 24 THE WITNESS: I see those 25 words. I can't see the date.</p>
<p style="text-align: right;">Page 76</p> <p>1 BY MR. C. PLACITELLA: 2 Q. Well, the date is over here, 3 4/9/71. See it? 4 A. Okay. 5 Q. Okay. And did you know that 6 Johnson &amp; Johnson was sued over baby powder 7 in 1971? 8 MR. BERNARDO: Object to the 9 form of the question. Again, outside the 10 scope of the notice and not tendering -- 11 outside the scope of the notice and not 12 tendering this witness for this topic, this 13 corporate representative. 14 THE WITNESS: I don't know what 15 this is. You said something about 16 privileged. I don't even know what that 17 means. So I don't know what I'm looking at. 18 BY MR. C. PLACITELLA: 19 Q. It means that these are documents 20 that your lawyer withheld from production, 21 because they say that they are privileged. 22 But they are -- the log itself is still 23 evidential that the cases took place. 24 Did you ever -- were you ever 25 provided any files from lawsuits against</p>	<p style="text-align: right;">Page 77</p> <p>1 Johnson &amp; Johnson involving baby powder from 2 1971? 3 MR. BERNARDO: Object to the 4 form of the question. 5 THE WITNESS: My understanding 6 was that I was here today to talk about the 7 specific things in your notice. And I 8 prepared my chart because of the specific 9 cases that you have. 10 BY MR. C. PLACITELLA: 11 Q. No, ma'am, that's not what you are 12 here to talk about. 13 You are here to talk about, the 14 corporate representative concerning the 15 discovery responses historically provided by 16 Johnson &amp; Johnson concerning the asbestos 17 content of talc, Johnson's Baby Powder or 18 Shower to Shower. 19 Do you see that? 20 A. Yes, I see that. 21 Q. Historical responses mean, as long 22 as you've been sued. There's not any 23 limitation by the number of the cases that I 24 set forth and I knew about. 25 You understand that, right?</p>

20 (Pages 74 to 77)

Page 78	Page 79
<p>1 MR. BERNARDO: Object to the 2 form of the question. 3 THE WITNESS: You're saying 4 that there's no limitation. 5 BY MR. C. PLACITELLA: 6 Q. Right. 7 So what you did, is the only thing 8 that you did to prepare for today's 9 deposition is to look at information that I 10 asked you to bring with you, correct? 11 A. No. 12 MR. BERNARDO: Object to the 13 form of the question. 14 THE WITNESS: That's -- that's 15 incorrect, that's not all I did. 16 BY MR. C. PLACITELLA: 17 Q. Okay. 18 A. I told you earlier, you know, the 19 depositions, the testimonies that I reviewed, 20 my conversations for almost an hour with 21 Dr. Hopkins. Most importantly, to reassure 22 myself that he has seen everything that has 23 been provided and that there was nothing new 24 that the company has not seen. 25 Q. Okay. Well, no one showed you any</p>	<p>1 files, lawsuit files concerning baby powder 2 from 1971, correct? 3 A. I did not specifically review any 4 of those, no. 5 Q. They were not provided to you? 6 MR. BERNARDO: Object to the 7 form of the question. 8 THE WITNESS: That's correct. 9 BY MR. C. PLACITELLA: 10 Q. All right. Where are those records 11 from 1971? 12 MR. BERNARDO: Object to the 13 form of the question. 14 THE WITNESS: I do not know. 15 BY MR. C. PLACITELLA: 16 Q. Okay. Well, I'm not asking you, 17 I'm asking Johnson &amp; Johnson. 18 Johnson &amp; Johnson, where are the 19 records from the lawsuits from 1971 involving 20 Johnson's Baby Powder, where are they? 21 MR. BERNARDO: Object to the 22 form of the question. 23 THE WITNESS: I do not know. 24 They could be in different places. 25 BY MR. C. PLACITELLA:</p>
Page 80	Page 81
<p>1 Q. Like where? 2 A. If -- they could be with their 3 outside counsel files. If there were actual 4 discoveries even filed for any of these, I -- 5 I don't know. 6 Q. Let's go down to 1972. Do you see 7 there's an entry for 1972 concerning pending 8 and anticipated litigation? 9 A. I see that. It says that, yes. 10 MR. BERNARDO: Object to the 11 form of the question. 12 BY MR. C. PLACITELLA: 13 Q. Where are the file -- the lawsuit 14 files related to Johnson &amp; Johnson from 1972? 15 MR. BERNARDO: Object to the 16 form of the question. 17 THE WITNESS: My answer would 18 be the same. 19 BY MR. C. PLACITELLA: 20 Q. What about, do you see where it 21 says that you were sued in 1973 and that a 22 memorandum was prepared concerning Johnson's 23 Baby Powder regulatory matters in 1973; where 24 are those files? 25 MR. BERNARDO: Object to the</p>	<p>1 form of the question. 2 THE WITNESS: I see that 3 this is here. I can't tell you where 4 these -- these files were specifically, 5 because I did not come prepared to speak 6 about these. 7 BY MR. C. PLACITELLA: 8 Q. Well, you are here to talk about 9 the historical discovery responses. How do 10 you know whether there were historical 11 discovery responses if you never looked at 12 the files? 13 A. Well, what I did do is speak to one 14 of the people that is involved in doing 15 searches for us to make sure that we had 16 everything available. And this is -- there 17 were no discovery responses in these cases. 18 I'm not prepared to speak about them. 19 Q. How do you know there were no 20 discovery responses in these cases? 21 A. I'm -- I believe that we're here 22 today to talk about the specific scope. And 23 I guess we're interpreting it different. It 24 sounds to be like we are. 25 Q. So what about 1974, do you see that</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 Johnson &amp; Johnson was sued in talc cases in 2 1974, according to their own responses? 3 A. That's what it says there, yes. 4 Q. Okay. And you see, if you turn it 5 over, they were sued in 1976? 6 A. I see those dates, yes. 7 Q. Okay. You see they were sued in 8 1977? 9 A. Again, I see those dates. 10 Q. You see that they were sued in 11 1978? 12 A. I see that, yes. 13 Q. Okay. Do you see that they were 14 sued in baby powder litigation in 1979? 15 MR. BERNARDO: Object to the 16 form of the question. 17 THE WITNESS: I see all this, 18 yes. 19 BY MR. C. PLACITELLA: 20 Q. Okay. And I'll ask you during the 21 break to look at this -- well, let me just 22 ask you about some specific cases. 23 Listed here in this log is 1981; do 24 you see that? 25 A. I see what you highlighted, yes.</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. Okay. And you see where it talks 2 about pending litigation? 3 A. I can't see it. 4 Q. Sorry. 5 A. I see that -- 6 Q. See that? 7 A. -- what it says, yes. 8 Q. And it talks about a case called 9 Westfall; do you see that? 10 A. Yes, I see that. 11 Q. What do you know about the Westfall 12 case? 13 A. I believe that had to do with 14 industrial talc. 15 Q. Okay. Did you review the files 16 related to the Westfall case? 17 A. I -- I -- vaguely familiar with it 18 when I saw that it had to deal with 19 industrial talc. I didn't feel that that was 20 within the scope of this. 21 Q. Did you know that the Westfall case 22 involved talc from the mines that you say 23 were used in baby powder? 24 MR. BERNARDO: Object to the 25 form of the question and the characterization</p>
<p style="text-align: right;">Page 84</p> <p>1 of prior testimony. 2 THE WITNESS: As I said, I -- I 3 am not an authority on what mines were used. 4 Well, I do know specifically 5 the cosmetic talc used in Johnson's Baby 6 Powder does not contain asbestos. 7 BY MR. C. PLACITELLA: 8 Q. What was my question? 9 A. You would have to repeat that back 10 to me. 11 Q. Do you have any idea what my 12 question was? 13 A. You asked me if I was familiar with 14 Westfall. 15 Q. What's that got to do with whether 16 it has asbestos? 17 Was that my question? 18 MR. BERNARDO: Object to the 19 form of the question. 20 BY MR. C. PLACITELLA: 21 Q. Or were you just, you know, wound 22 up and going to just give a response? 23 MR. BERNARDO: Object to the 24 form of the question, that's completely 25 inappropriate.</p>	<p style="text-align: right;">Page 85</p> <p>1 THE WITNESS: No, I think it's 2 important that this was about industrial 3 talc. And that was not my interpretation of 4 the notice today. 5 BY MR. C. PLACITELLA: 6 Q. Did you skip the Westfall case 7 because you, Johnson &amp; Johnson, knew that 8 there was proof in that case that there was 9 asbestos in the mine owned by Johnson &amp; 10 Johnson? 11 MR. BERNARDO: Object to the 12 form of the question. 13 THE WITNESS: No, I did not. 14 BY MR. C. PLACITELLA: 15 Q. You knew that, though, right? 16 MR. BERNARDO: Objection. 17 BY MR. C. PLACITELLA: 18 Q. You knew that the mine that was 19 owned by Johnson &amp; Johnson that was the issue 20 in the Westfall case had asbestos in it, 21 right? 22 MR. BERNARDO: Object to the 23 form of the question. 24 BY MR. C. PLACITELLA: 25 Q. You knew that?</p>

22 (Pages 82 to 85)

Page 86	Page 87
<p>1 You, Johnson &amp; Johnson knew that?</p> <p>2 A. No, I did not. I did not go into</p> <p>3 detail with this, because it was industrial</p> <p>4 talc.</p> <p>5 Q. Okay. What about the next page,</p> <p>6 from 1982 the Joly case?</p> <p>7 What do you know about the Joly</p> <p>8 case?</p> <p>9 A. I don't know anything about it.</p> <p>10 Q. You're sure about that?</p> <p>11 A. This is the first I'm seeing it.</p> <p>12 Q. You're sure about that?</p> <p>13 A. I don't recollect anything on this,</p> <p>14 no.</p> <p>15 Q. So you did not review any records</p> <p>16 concerning the Joly case?</p> <p>17 A. It's not familiar to me, no.</p> <p>18 Q. So before coming here today, were</p> <p>19 you aware that Johnson &amp; Johnson was sued in</p> <p>20 a talc case, according to their own privilege</p> <p>21 log from 1971 until 2010, each and every</p> <p>22 year, except 1975?</p> <p>23 MR. BERNARDO: Object to the</p> <p>24 form of the question.</p> <p>25 THE WITNESS: No, I'm not</p>	<p>1 familiar with the dates, no.</p> <p>2 BY MR. C. PLACITELLA:</p> <p>3 Q. Okay. And you don't any of the</p> <p>4 records and did not review any of the records</p> <p>5 related to any of the cases on this privilege</p> <p>6 log, other than what is marked on P-2?</p> <p>7 MR. BERNARDO: Object to the</p> <p>8 form of the question.</p> <p>9 BY MR. C. PLACITELLA:</p> <p>10 Q. Is that fair?</p> <p>11 A. Yes.</p> <p>12 Q. And other than the records, the</p> <p>13 cases that are marked or set forth in P-2,</p> <p>14 you have no idea whatsoever, that is you,</p> <p>15 Johnson &amp; Johnson, where the records are</p> <p>16 related to the lawsuits filed against</p> <p>17 Johnson &amp; Johnson from 1971 until 2010 --</p> <p>18 MR. BERNARDO: Object to the --</p> <p>19 BY MR. C. PLACITELLA:</p> <p>20 Q. -- correct?</p> <p>21 MR. BERNARDO: Object to the</p> <p>22 form of the question. Beyond the scope of</p> <p>23 the notice.</p> <p>24 You can answer in your</p> <p>25 individual capacity if you know.</p>
Page 88	Page 89
<p>1 THE WITNESS: I don't know.</p> <p>2 BY MR. C. PLACITELLA:</p> <p>3 Q. And you have no idea what discovery</p> <p>4 responses were proffered by Johnson &amp; Johnson</p> <p>5 in any of the lawsuits that are referenced in</p> <p>6 the log marked P-487 [verbatim]?</p> <p>7 MR. BERNARDO: Object to the</p> <p>8 form of the question.</p> <p>9 THE WITNESS: Is that large</p> <p>10 thing 487?</p> <p>11 BY MR. C. PLACITELLA:</p> <p>12 Q. Yes.</p> <p>13 A. This is the first I've seen this.</p> <p>14 Q. So in preparing for today's</p> <p>15 deposition, your attorneys never provided you</p> <p>16 any records related to discovery responses</p> <p>17 from any case on this exhibit, other than</p> <p>18 what you have marked here as P-2; is that</p> <p>19 fair?</p> <p>20 MR. BERNARDO: Object to the</p> <p>21 form of the question.</p> <p>22 THE WITNESS: As I said, this</p> <p>23 is the first I had seen this document.</p> <p>24 MR. C. PLACITELLA: Okay. Why</p> <p>25 don't we take a break now.</p>	<p>1 THE VIDEOTAPE OPERATOR: The</p> <p>2 time is 11:20 a m. We're off the record.</p> <p>3 (Brief recess.)</p> <p>4 THE VIDEOTAPE OPERATOR: Time</p> <p>5 is 11:42 a m. We are on the record.</p> <p>6 MR. C. PLACITELLA: Okay, thank</p> <p>7 you.</p> <p>8 BY MR. C. PLACITELLA:</p> <p>9 Q. I have to ask the question. I hope</p> <p>10 I know the answer.</p> <p>11 Am I fair to -- is it fair to</p> <p>12 assume you didn't discuss your deposition</p> <p>13 during the break?</p> <p>14 A. We did not.</p> <p>15 Q. Okay. Good.</p> <p>16 You said before you spoke to Pamela</p> <p>17 Downs and she did the search.</p> <p>18 What exactly did she search?</p> <p>19 A. My understanding is that she</p> <p>20 search -- searched, excuse me, for the</p> <p>21 documents that you have listed in the second</p> <p>22 part of the deposition -- of the notice that</p> <p>23 you had served us.</p> <p>24 Q. Okay. And what did, what did she</p> <p>25 use to search; was it a computer, was it a</p>

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 database, what?</p> <p>2 A. She used search terms. I know that</p> <p>3 she searched by name. She searched by --</p> <p>4 excuse me, she searched by product.</p> <p>5 Q. So she -- when she conducted her</p> <p>6 search, she didn't look at all lawsuits</p> <p>7 historically that Johnson &amp; Johnson was</p> <p>8 involved with concerning talc, only the</p> <p>9 lawsuits that were mentioned on P-1; is that</p> <p>10 fair?</p> <p>11 A. My understanding is that she did</p> <p>12 the search for the documents that you</p> <p>13 requested.</p> <p>14 Q. Okay. So in your preparing</p> <p>15 information concerning historical discovery</p> <p>16 responses, you never went beyond the specific</p> <p>17 cases that we were aware of and that were</p> <p>18 listed on P-1 correct?</p> <p>19 MR. BERNARDO: Object to the</p> <p>20 form of the question.</p> <p>21 THE WITNESS: My concentration</p> <p>22 was on what is listed in the first part of</p> <p>23 your notice. And we ensured that Miss Downs</p> <p>24 had searched for everything that was involved</p> <p>25 in part 2. Excuse me.</p>	<p style="text-align: right;">Page 91</p> <p>1 BY MR. C. PLACITELLA:</p> <p>2 Q. But she didn't search for all</p> <p>3 historical discovery responses in talc cases</p> <p>4 that were provided by Johnson &amp; Johnson, I</p> <p>5 take it?</p> <p>6 A. That's my understanding.</p> <p>7 Q. And she certainly didn't search for</p> <p>8 any of the cases that are set forth in this</p> <p>9 log, 486, other than what's on your list,</p> <p>10 correct?</p> <p>11 A. I don't believe so, no.</p> <p>12 Q. Where would the information be</p> <p>13 stored for the lawsuits that were set forth</p> <p>14 on the log, 486?</p> <p>15 A. They could be in various places. I</p> <p>16 don't know specifically where they would be.</p> <p>17 Q. Well, is it in the Legal</p> <p>18 Department?</p> <p>19 A. Some of it could be in the Legal</p> <p>20 Departments if -- if there were any documents</p> <p>21 associated with it. And they also could be</p> <p>22 in outside counsels.</p> <p>23 Q. Well, we know that there were</p> <p>24 documents associated with it, right? Because</p> <p>25 they actually list the documents. So, for</p>
<p style="text-align: right;">Page 92</p> <p>1 example, you know, in this first entry, the</p> <p>2 first two entries, it lists documents. So</p> <p>3 they know that there were documents in the</p> <p>4 Legal Department, correct?</p> <p>5 MR. BERNARDO: Object, object</p> <p>6 to the form of the question.</p> <p>7 THE WITNESS: As I told you</p> <p>8 earlier, this is the first time I've seen</p> <p>9 this. It says Privilege Description. I</p> <p>10 don't know really what that means. Does it</p> <p>11 mean they're documents or not? I don't know.</p> <p>12 BY MR. C. PLACITELLA:</p> <p>13 Q. Well, let's just look at it. It</p> <p>14 says, Attachment prepared by counsel.</p> <p>15 Attachment is not an apple or an</p> <p>16 orange, right?</p> <p>17 It's a piece of paper, right?</p> <p>18 A. It says attachment here, yes.</p> <p>19 Q. All right. Pursuant to pending and</p> <p>20 anticipated litigation.</p> <p>21 You understand that means current</p> <p>22 cases and cases in the future?</p> <p>23 MR. BERNARDO: Object to the</p> <p>24 form of the question.</p> <p>25 THE WITNESS: Again, I can't</p>	<p style="text-align: right;">Page 93</p> <p>1 comment on any of this.</p> <p>2 BY MR. C. PLACITELLA:</p> <p>3 Q. Regarding Johnson's Baby Powder</p> <p>4 litigation, right?</p> <p>5 A. That's what it says, yes.</p> <p>6 Q. So according to this, there were</p> <p>7 documents apparently in the department, in</p> <p>8 the Legal Department related to a case file</p> <p>9 in 1971 --</p> <p>10 MR. BERNARDO: Object.</p> <p>11 BY MR. C. PLACITELLA:</p> <p>12 Q. -- correct?</p> <p>13 MR. BERNARDO: Object to the</p> <p>14 form of the question.</p> <p>15 THE WITNESS: You're reading</p> <p>16 what it says here.</p> <p>17 BY MR. C. PLACITELLA:</p> <p>18 Q. And, for example, the very first</p> <p>19 entry on here talks about letters concerning</p> <p>20 samples in connection with ongoing and</p> <p>21 anticipated litigation; do you see that?</p> <p>22 A. That's what it says, yes.</p> <p>23 Q. Well, what -- who had -- who</p> <p>24 retained talc samples related to litigation,</p> <p>25 to your knowledge?</p>

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<p>1 MR. BERNARDO: Object to the 2 form of the question. 3 BY MR. C. PLACITELLA: 4 Q. Is that the Legal Department? 5 A. I don't know. I don't -- I can't 6 comment on this today. 7 Q. Well, what does J&amp;J know about talc 8 samples that were involved in litigation as 9 set forth in their own privilege log? 10 MR. BERNARDO: Object to the 11 form of the question. Beyond the scope of 12 the notice. 13 You can answer in your 14 individual capacity, if you know. 15 THE WITNESS: I can't answer 16 that. 17 BY MR. C. PLACITELLA: 18 Q. So in preparing historical -- to be 19 here today to talk about historical discovery 20 responses, you have no information whatsoever 21 about samples that were part of the 22 litigation discovery process, correct? 23 MR. BERNARDO: Object, object 24 to the form of the question. 25 THE WITNESS: I -- again, I</p>	<p>1 cannot answer on any of these cases. I'm not 2 familiar. 3 BY MR. C. PLACITELLA: 4 Q. Now, in your preparation and in the 5 knowledge of Johnson &amp; Johnson, do you have a 6 record or any information of a single case 7 where Johnson &amp; Johnson turned over asbestos 8 testing data prior to 2017? 9 MR. BERNARDO: Object to the 10 form of the question. 11 THE WITNESS: Could you repeat 12 that question? 13 BY MR. C. PLACITELLA: 14 Q. Yes, ma'am. 15 Am I correct -- well, strike that. 16 Do you have any evidence that 17 Johnson &amp; Johnson turned over in a lawsuit 18 involving talc testing data related to 19 asbestos and talc prior to 2017? 20 A. If it was requested, Johnson &amp; 21 Johnson would have turned it over. 22 Q. When does your research -- or when 23 does Johnson &amp; Johnson maintain is the first 24 time that it turned over testing data 25 concerning asbestos in Johnson &amp; Johnson talc</p>
Page 96	Page 97
<p>1 in litigation? 2 When is the first time that 3 happened? 4 A. I -- again, it would be whenever it 5 was requested. 6 Q. But from your knowledge, so you 7 believe that the first time it was requested 8 it was turned over? 9 MR. BERNARDO: Object to the 10 form of the question. 11 THE WITNESS: If there were 12 specific documents requested, they would have 13 been. I -- we're talking generally so I 14 don't know the answer to this. 15 BY MR. C. PLACITELLA: 16 Q. Well, you know, for example, when 17 lawyers in cases involving cancer and baby 18 powder ask for testing data, Johnson &amp; 19 Johnson took the position that they weren't 20 going to turn it over because it was 21 privileged. 22 MR. BERNARDO: Object. 23 BY MR. C. PLACITELLA: 24 Q. You know that, right? 25 MR. BERNARDO: Object to the</p>	<p>1 form of the question. 2 BY MR. C. PLACITELLA: 3 Q. You saw that, right? 4 A. I don't know this, no. 5 Q. Okay. That would be wrong, 6 wouldn't you say? 7 MR. BERNARDO: Object to the 8 form of the question. 9 THE WITNESS: I can't -- I 10 can't comment on that. 11 BY MR. C. PLACITELLA: 12 Q. I mean, that would be a wrong thing 13 to do if you had testing data concerning 14 asbestos in a talc and you withheld it and 15 asserted privilege as a -- as a reason for 16 not turning it over, correct? 17 MR. BERNARDO: Object, object 18 to the form of the question. 19 THE WITNESS: If Johnson &amp; 20 Johnson knew that anything about any of its 21 products were dangerous, they would take 22 steps to correct that. 23 BY MR. C. PLACITELLA: 24 Q. Ma'am, that wasn't my question. 25 My question was, if you had</p>

25 (Pages 94 to 97)

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<p>1 information in your possession, that's you, 2 Johnson &amp; Johnson, concerning testing data on 3 asbestos and talc that was requested in a 4 lawsuit, it would be wrong not to turn that 5 over, correct? 6 MR. BERNARDO: Object to the 7 form of the question. 8 THE WITNESS: I just have to 9 say, if it were requested they would turn 10 over whatever was appropriate. 11 BY MR. C. PLACITELLA: 12 Q. Right. 13 And if they didn't turn it over, 14 that would be wrong, correct? 15 MR. BERNARDO: Object to the 16 form of the question. 17 THE WITNESS: I can't say wrong 18 or right, or whatever legal basis there would 19 be. So I can't comment on that. 20 BY MR. C. PLACITELLA: 21 Q. Okay. You, Johnson &amp; Johnson, 22 can't testify or attest to whether it would 23 be wrong or right to turn over asbestos 24 testing data if requested in a lawsuit; 25 Johnson &amp; Johnson doesn't know if that's</p>	<p>1 wrong or right? 2 MR. BERNARDO: Object to the 3 form of the question. 4 THE WITNESS: No, I'm not 5 saying that. 6 I'm just saying that if there 7 had been a legal decision as to why some 8 evidence or whatever you're asking for was 9 not given, I -- I can't even comment on that. 10 All I can say is that if there was ever 11 anything concrete and scientific saying that 12 any product was unsafe, Johnson &amp; Johnson 13 would not hide that. 14 BY MR. C. PLACITELLA: 15 Q. When you say "concrete and 16 scientific," what do you mean by that? 17 A. I mean that scientific evidence 18 that had been peer reviewed, that had been 19 researched, Johnson &amp; Johnson would take 20 steps to do something about the products. 21 Q. When you say peer review, what do 22 you mean by that? 23 A. Peer reviewed means that the -- the 24 particular expertise have reviewed a 25 particular medical journal or whatever it</p>
Page 100	Page 101
<p>1 has -- whatever it is and made comments on 2 it. 3 Q. So unless -- so if you have 4 evidence in your possession about asbestos in 5 baby powder, you're saying you don't have to 6 turn it over unless it's commented on or 7 reviewed by a medical journal? 8 MR. BERNARDO: Object to the 9 form of the question. 10 BY MR. C. PLACITELLA: 11 Q. Is that what you're saying? 12 MR. BERNARDO: Object to the 13 form of the question. 14 THE WITNESS: That's not what I 15 said. 16 BY MR. C. PLACITELLA: 17 Q. All right. So what I'm asking you, 18 if you have evidence in your possession 19 related to testing of asbestos in baby 20 powder, what was your obligation in 21 litigation to turn that over? 22 MR. BERNARDO: Object to the 23 form of the question. She's not here in the 24 capacity as a lawyer. She's not -- this is 25 not within the scope of the notice.</p>	<p>1 You can answer in your 2 individual capacity -- 3 MR. C. PLACITELLA: Is that an 4 objection to form? 5 MR. BERNARDO: I'm -- given the 6 way you're conducting this deposition, 7 Mr. Placitella, I think I'm entitled to point 8 out that your questions are well beyond the 9 scope, and clarify the extent to which we are 10 tendering this witness as a corporate 11 representative. So it is beyond form, but I 12 think -- 13 MR. C. PLACITELLA: Okay. 14 MR. BERNARDO: -- it's 15 appropriate under the circumstances. 16 BY MR. C. PLACITELLA: 17 Q. You understand that you're here to 18 talk about the historical discovery responses 19 provided by Johnson &amp; Johnson, correct? 20 A. My -- 21 Q. In lawsuits, correct? 22 A. My understanding is that I'm here 23 today to talk about -- or the way that I have 24 interpreted the notice to be, which there 25 seems to be some disagreement with.</p>

26 (Pages 98 to 101)

<p style="text-align: right;">Page 102</p> <p>1 So it's specifically discovery 2 responses concerning the asbestos content of 3 talc, Johnson &amp; Johnson's Baby Powder, Shower 4 to Shower. 5 Q. Correct. 6 So if Johnson &amp; Johnson had 7 information in its possession concerning 8 asbestos content in baby powder, it would 9 have been wrong to not turn that over in a 10 lawsuit, correct? 11 MR. BERNARDO: Object to the 12 form of the question. 13 THE WITNESS: Again, I -- I 14 feel comfortable that Johnson &amp; Johnson has 15 turned over everything that has been 16 requested. 17 BY MR. C. PLACITELLA: 18 Q. Every time it was asked for? 19 MR. BERNARDO: Object to the 20 form of the question. 21 THE WITNESS: I can't comment 22 on other cases, on other notices or anything. 23 I don't know anything about that. 24 BY MR. C. PLACITELLA: 25 Q. Okay. I'm not asking you to</p>	<p style="text-align: right;">Page 103</p> <p>1 comment. I'm asking you, Johnson &amp; Johnson. 2 Johnson &amp; Johnson does not know 3 whether it turned over asbestos testing 4 evidence in lawsuits when requested? 5 Johnson &amp; Johnson doesn't know 6 that? 7 A. I'm representing Johnson &amp; Johnson, 8 yes. Because Johnson &amp; Johnson is a company, 9 not a person. But it is not -- I do not know 10 this, yes. 11 Q. So Johnson &amp; Johnson does not know? 12 MR. BERNARDO: Object to the 13 form of the question, beyond the scope of the 14 notice. 15 THE WITNESS: This is not what 16 I was prepared to speak about today. 17 BY MR. C. PLACITELLA: 18 Q. You are here to talk about the 19 historical responses. And I'm saying, 20 historically, you don't know whether 21 Johnson &amp; Johnson has actually turned over 22 the evidence and when is the first time it 23 turned over the evidence? 24 A. No, I do not know. 25 Q. So Johnson &amp; Johnson has no idea</p>
<p style="text-align: right;">Page 104</p> <p>1 when the first time it turned over in the 2 context of a lawsuit asbestos testing 3 evidence, correct? 4 MR. BERNARDO: Object, object 5 to the form of the question. This witness is 6 not being tendered to address this. 7 And she can answer in her 8 individual capacity, if she knows. 9 THE WITNESS: I do not know. 10 BY MR. C. PLACITELLA: 11 Q. What do you know about the Joly 12 case? 13 A. I told you earlier, I'm not 14 familiar with that case. 15 Q. You're certain? 16 A. I don't remember it. 17 Q. You have no personal involvement in 18 the case? 19 A. I didn't say that. I don't 20 remember. It's been, what? Ten years, at 21 least, that I've been out of the company. So 22 I -- and what year is this? I don't even 23 know. 24 Q. Well, you're here to talk about -- 25 you're Johnson &amp; Johnson.</p>	<p style="text-align: right;">Page 105</p> <p>1 Does Johnson &amp; Johnson know 2 anything about the Joly case? 3 MR. BERNARDO: Object to the 4 form of the question. 5 THE WITNESS: I'm not here 6 today to prepare to speak about the Joly 7 case. 8 BY MR. C. PLACITELLA: 9 Q. What about the Yuhas case, did you 10 ever hear of that? 11 A. No, I did not. 12 Q. Does Johnson &amp; Johnson know 13 anything about the Edley case? 14 A. I'm not familiar with the cases 15 that you're citing now. 16 Q. You do know something about the 17 Gambino case? 18 A. I've heard of the name, yes. 19 Q. What do you know about the Gambino 20 case? 21 A. That is one of the ones that was 22 listed, which you requested documents, but 23 I -- that's why I had asked for that chart, 24 to refresh myself, because the top of my 25 head, I don't remember what Gambino was.</p>

27 (Pages 102 to 105)

Page 106	Page 107
<p>1 Q. Well, where are the records related 2 to the Gambino case? 3 MR. BERNARDO: Object to the 4 form of the question. 5 THE WITNESS: If there were any 6 records, they -- they would have been 7 provided to you as requested. 8 BY MR. C. PLACITELLA: 9 Q. Well, did you review records 10 related to the Gambino case? 11 A. I did review the Complaint, that's, 12 again, why, you know, the composite and the 13 chart so I could just remember. I wanted to 14 know what the Complaint was. 15 Q. So other than the Gambino 16 Complaint, you didn't review anything else as 17 related to the Gambino case in order to 18 testify here today? 19 MR. BERNARDO: Object to the 20 form of the question. 21 BY MR. C. PLACITELLA: 22 Q. Correct? 23 A. I reviewed the documents for 24 which -- or the cases for which there were 25 documents and discovery responses, yes.</p>	<p>1 Q. What did you review in connection 2 with the Gambino case? 3 A. As I said, I just reviewed the 4 Complaint and that was all that was 5 available. 6 Q. Okay. So do you know what the 7 source of the talc was that was at issue in 8 the Gambino case? 9 MR. BERNARDO: Object to the 10 form of the question. 11 THE WITNESS: I'm not familiar 12 with the sources of the talc for each 13 specific case, no. 14 BY MR. C. PLACITELLA: 15 Q. What happened to the plaintiff in 16 the Gambino case? 17 What happened to that case? 18 MR. BERNARDO: Object to the 19 form of the question. 20 THE WITNESS: I don't remember. 21 BY MR. C. PLACITELLA: 22 Q. Were the records from the Gambino 23 case when the case was over preserved? 24 MR. BERNARDO: Object to the 25 form of the -- object to the form of the</p>
Page 108	Page 109
<p>1 question. 2 THE WITNESS: If there were 3 records for when a case was over, I would 4 have to believe that they were preserved, 5 yes. 6 BY MR. C. PLACITELLA: 7 Q. Okay. Where? 8 A. I -- I don't know specifically. 9 They might even be outside counsel. 10 Q. What about the Selby case, what do 11 you know about that? 12 A. Again, I know that was one of the 13 ones listed. 14 Q. And what do you know about the 15 Selby case? 16 A. May I have the -- the chart that... 17 THE COURT REPORTER: Here you 18 go. 19 THE WITNESS: Thank you. 20 Now, what it says here, that I 21 was most interested in the Complaint that was 22 filed and this is talcosis. It was filed in 23 1993. 24 BY MR. C. PLACITELLA: 25 Q. What did you review in connection</p>	<p>1 with the Selby case? 2 A. If there were any discovery 3 responses for Selby. 4 Q. And what -- what is it -- what do 5 you remember of -- from the discovery 6 responses? 7 A. I think the important thing about 8 this, this was a talcosis case. 9 Q. That's all you remember from the 10 discovery? 11 A. Yes. 12 Q. Okay. And what happened to the 13 Selby case? 14 A. I don't know. 15 Q. Okay. Have you ever heard of a 16 case called Andonian? 17 A. No, I have not. 18 Q. What about a case filed by Fae 19 Miller? 20 A. No, not familiar. 21 Q. What about the Coker case? 22 A. Coker is -- is one of the ones 23 listed in your notice. 24 Q. Okay. And what do you know about 25 the Coker case?</p>

28 (Pages 106 to 109)

<p style="text-align: right;">Page 110</p> <p>1 A. The Coker case was -- alleged 2 injury was peritoneal mesothelioma. And it 3 was filed in 1997. 4 Q. What else do you know? 5 A. That is all I know about it. 6 Q. What do you know about the 7 discovery responses provided in the Coker 8 case? 9 MR. BERNARDO: Object to the 10 form of the question. 11 THE WITNESS: I do not know if 12 there were discovery responses. 13 BY MR. C. PLACITELLA: 14 Q. You're the person here to testify 15 about this, with the most knowledge 16 concerning the historical discovery responses 17 and you know nothing about the discovery 18 responses; is that what you're saying? 19 MR. BERNARDO: Object to the 20 form of the question and the characterization 21 of her testimony. 22 THE WITNESS: No, I'm not 23 saying that. 24 Remember, I -- I talked about 25 how we did the searches and -- and I</p>	<p style="text-align: right;">Page 111</p> <p>1 reassured myself that all searches were as 2 thorough as could be. And -- and there 3 were -- there's no more information about the 4 Coker case. 5 BY MR. C. PLACITELLA: 6 Q. Other than a Complaint? 7 A. Yes. 8 Q. What about the Durham case; did you 9 ever hear of that? 10 A. No, I'm not familiar with that. 11 Q. What about the Cooper case, what do 12 you know about the Cooper case? 13 A. Seems that it was a rash was the 14 alleged complaint in 1986. 15 Q. What happened to the Cooper case? 16 A. I do not know. 17 Q. Where -- did you review any 18 discovery responses related to the Cooper 19 case? 20 A. If they had been made available, I 21 would have. And I don't believe they were 22 available. 23 Q. Okay. What about the Cunningham 24 case, what do you know about that? 25 A. That we couldn't find anything on</p>
<p style="text-align: right;">Page 112</p> <p>1 the Cunningham case. 2 Q. So you know nothing? 3 A. Yes. 4 MR. BERNARDO: Object -- 5 BY MR. C. PLACITELLA: 6 Q. What about the -- 7 MR. BERNARDO: -- to the form 8 of the question. 9 BY MR. C. PLACITELLA: 10 Q. -- Kreppel case? 11 A. I don't know that name. 12 Q. K-r-e-p-p-e-l, you know nothing 13 about that? 14 A. Oh, Kreppel. I thought you said... 15 Q. Right. 16 A. Yeah, that something was filed in 17 1988, but they could not identify it. 18 Q. So you have no records, Johnson &amp; 19 Johnson has no records related to the Kreppel 20 case? 21 MR. BERNARDO: Object to the 22 form of the question. 23 THE WITNESS: Nothing could be 24 found internally. Again, something may have 25 been in outside counsel files.</p>	<p style="text-align: right;">Page 113</p> <p>1 BY MR. C. PLACITELLA: 2 Q. Well, what kind of search was done 3 for the Kreppel case? 4 A. The same that I already explained 5 to you was done on all the cases. They were 6 searched by as many terms as -- as provided. 7 Q. So you didn't review any discovery 8 responses related to the Kreppel case? 9 A. If they had been made available, I 10 would have reviewed them, and there were none 11 available. 12 Q. What about the Lopez case, what do 13 you know about that? 14 A. The same thing, it's -- I think 15 it's important to note that it's industrial 16 talc, but I don't have any more information. 17 Q. How do you know that? 18 A. That was what was obvious, you 19 know, set forth in the actual Complaint. 20 Q. So the only thing you had related 21 to the Lopez case was the Complaint? 22 A. That was all that was available. 23 Again, I saw this was industrial talc, so I 24 did not go any further with this. But if 25 there were any discovery responses or</p>

<p style="text-align: right;">Page 114</p> <p>1 anything else associated with any of these 2 cases, it would have been made available to 3 me and to you. 4 Q. What about the Ritter case, what do 5 you know about that? 6 A. Same thing, this is industrial 7 talc. 8 Q. Okay. And what discovery responses 9 did you review? 10 A. If there had been discovery 11 responses I would have reviewed them, and I 12 believe none were available. And, again, 13 it's industrial talc. 14 Q. What about the Roberts case? 15 A. This is -- this concerns a 16 deodorant product, chronic lesions of the 17 armpits. 18 Q. I don't care about that. 19 What about the case of Sheldon 20 Sullivan, what do you know about that? 21 A. We don't know much. The Complaint 22 did not specify what the injury was. 23 Q. Am I correct that when you actually 24 at least in one case swore under oath that 25 information you were providing was true and</p>	<p style="text-align: right;">Page 115</p> <p>1 accurate, to your knowledge, correct? 2 MR. BERNARDO: Object to the 3 form of the question. 4 THE WITNESS: Would you ask 5 that question again? 6 BY MR. C. PLACITELLA: 7 Q. Sure. 8 You actually certified answers to 9 interrogatories in some cases, correct? 10 A. From time to time, yes. 11 Q. And when you did that, you swore 12 under oath that the information that you were 13 provided was true and accurate, to the best 14 of your knowledge, correct? 15 A. Yes. 16 Q. And you agree with me that when 17 swearing under oath, the information that 18 you're swearing to is only as good as the 19 information that you're provided, correct? 20 A. I mean, I took it very seriously 21 when I would sign anything and swear that. 22 And I felt confident that the people that I 23 directed counsel to speak with would provide 24 the right answers. 25 Q. Did you ever testify under oath</p>
<p style="text-align: right;">Page 116</p> <p>1 that the -- that when swearing under oath the 2 information you were swearing to was only as 3 good as the information you were provided? 4 A. No, I did not swear to that. 5 MR. C. PLACITELLA: I'm going 6 to go video, please. 7 (At which time the following 8 audio recording is played for the witness.) 9 "QUESTION: So if you're 10 getting information about the product, the 11 information -- 12 (Multiple speakers, 13 unintelligible crosstalk.) 14 MR. BERNARDO: Is this supposed 15 to be video? 16 THE WITNESS: There's no video. 17 "ANSWER: Yes, from our -- our 18 scientists, I believe and trust their 19 expertise, yes." 20 (At which time the audio 21 playback is concluded.) 22 MR. C. PLACITELLA: She's not 23 seeing the video. 24 THE COURT REPORTER: Can we cue 25 that up again, because...</p>	<p style="text-align: right;">Page 117</p> <p>1 MR. C. PLACITELLA: Sure. 2 Tell me when you're ready. 3 THE VIDEOTAPE OPERATOR: Stand 4 by. The time is 12:05 p.m. Off the record. 5 (Off-the-record discussion.) 6 THE VIDEOTAPE OPERATOR: Time 7 is 12:06 p.m. on the record. Stand by. Go 8 ahead. 9 (At which time the following 10 audio recording is played for the witness.) 11 "QUESTION: So if you're 12 getting --") 13 MR. BERNARDO: Still not coming 14 up. 15 "QUESTION: -- information 16 about the product the information --" 17 MR. BERNARDO: There you go. 18 "QUESTION: -- the information 19 that you're providing is only as good as the 20 information that's been provided to you, 21 correct? 22 "ANSWER: Yes, from our -- our 23 scientists, I believe and trust their 24 expertise, yes." 25 (At which time the audio</p>

30 (Pages 114 to 117)

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<p>1 playback is concluded.) 2 BY MR. C. PLACITELLA: 3 Q. Do you recall that testimony? 4 THE VIDEOTAPE OPERATOR: Okay, 5 counsel. 6 BY MR. C. PLACITELLA: 7 Q. So the information that you relay 8 in answering interrogatories is only as good 9 as the information provided to you, correct? 10 MR. BERNARDO: Object to the 11 form of the question. 12 THE WITNESS: I wouldn't use 13 "only." 14 As I said before, that I -- I 15 trust these people. I worked with them for 16 years. These weren't just somebody down the 17 street that I grabbed and said, You know, 18 would you answer this? 19 These were people who were 20 experts in their fields. And that's why they 21 were chosen. 22 BY MR. C. PLACITELLA: 23 Q. Well, let me ask you some questions 24 about that. 25 Even though you were the person in</p>	<p>1 charge of responding to consumer inquiries 2 and answering -- and certifying 3 interrogatories about talc safety, there were 4 discussions about the dangers of Johnson's 5 Baby Powder you were never privy to, correct? 6 A. There -- I don't think there were 7 discussions about the dangers of Johnson's 8 Baby Powder. In our normal course of 9 business, we would always discuss our 10 products, ensuring that they are safe. So, 11 yeah, there would be discussions, but not 12 that it was unsafe. 13 MR. C. PLACITELLA: Okay. Can 14 I go to the video, please? 15 THE VIDEOTAPE OPERATOR: Stand 16 by. Go ahead, sir. 17 (At which time the following 18 audio recording is played for the witness.) 19 "QUESTION: And they had 20 discussions outside of your presence about 21 the dangers or problems associated with baby 22 powder and those were never communicated to 23 you as the person who was in charge of 24 dealing with the public as it relates to baby 25 powder, right?</p>
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<p>1 "UNIDENTIFIED COUNSEL: Same 2 objection, compound, vague and ambiguous. 3 "You can answer. 4 "ANSWER: There may have been 5 conversations that I was not privy to, yes." 6 (At which time the audio 7 playback is concluded.) 8 BY MR. C. PLACITELLA: 9 Q. Do you recall giving that 10 testimony? 11 A. That's me. 12 Q. Am I correct that although you were 13 the person who certified answers to 14 interrogatories, no asbestos testing evidence 15 was ever provided to you, correct? 16 A. That was not my role. They -- they 17 could have shown me study and research. And 18 I really wouldn't understand it. That's why 19 we had experts who would understand it. 20 That's who we relied on. 21 Q. All right. Let me ask the question 22 again. 23 Am I correct that no asbestos 24 testing evidence was ever provided to you in 25 any capacity, correct?</p>	<p>1 MR. BERNARDO: Object to the 2 form of the question. 3 THE WITNESS: As -- as I said, 4 I did answer you, that I did not review any 5 of that. That was not my role. 6 BY MR. C. PLACITELLA: 7 Q. Even when you certified information 8 about asbestos testing evidence under oath, 9 correct? 10 MR. BERNARDO: Object to the 11 form of the question. 12 THE WITNESS: The same thing. 13 I felt comfortable. I could verify, nothing 14 was jumping out at me as wrong. It was the 15 company's position that there was no asbestos 16 in the cosmetic talc used in Johnson's Baby 17 Powder. And I felt very comfortable in the 18 people who answered the questions. 19 BY MR. C. PLACITELLA: 20 Q. What was my question? 21 A. Repeat it, please. 22 Q. Do you have any idea what it was? 23 A. You asked me if I had ever seen or 24 reviewed any of the studies. There was no 25 reason for me to.</p>

31 (Pages 118 to 121)

<p style="text-align: right;">Page 122</p> <p>1 Q. Even though you were certifying 2 under oath about what was or was not in the 3 studies? 4 MR. BERNARDO: Object to the 5 form. 6 BY MR. C. PLACITELLA: 7 Q. There was no reason for you to look 8 at them -- 9 A. I -- 10 Q. -- or even see them? 11 A. I wasn't certifying what was in or 12 not in the studies. I was certifying that 13 these questions had been answered. Again, I 14 directed counsel to speak with those who 15 could most expertly answer the questions. 16 Q. Ma'am, you certified under oath 17 under penalty of perjury that the information 18 provided was true and accurate, to the best 19 of your knowledge, did you not? 20 A. Yes, that's correct. 21 Q. And in doing that you never 22 reviewed a single piece of paper before 23 making that certification, correct? 24 A. That's correct. That was not my 25 role to do it. I was representing the</p>	<p style="text-align: right;">Page 123</p> <p>1 company, because the company can't sign. But 2 I started the process by sending counsel to 3 speak with those who could best answer. So I 4 knew right up front that the right people 5 were involved. 6 Q. The answer to my question is, 7 ma'am, when you certified interrogatories 8 under oath, under penalty of perjury, and 9 said they were true and accurate, to the best 10 of your knowledge, you never reviewed a 11 single piece of paper before doing so, 12 correct? 13 MR. BERNARDO: Object to the 14 form of the question, asked and answered. 15 THE WITNESS: If there were 16 papers involved, I did not review them, no. 17 BY MR. C. PLACITELLA: 18 Q. And you swore under oath that the 19 sources from what -- where Johnson Baby -- 20 where Johnson &amp; Johnson got its baby powder 21 never contained either asbestos or Tremolite; 22 you swore to that, correct? 23 MR. BERNARDO: Object to the 24 form of the question. 25 THE WITNESS: I verified the</p>
<p style="text-align: right;">Page 124</p> <p>1 answers that were given to those questions. 2 BY MR. C. PLACITELLA: 3 Q. Verify means you just signed them? 4 A. No, I did not just sign them. As I 5 said, if anything ever jumped out at me, but 6 I had the experts answer those questions. 7 Q. You never reviewed any evidence 8 whatsoever before swearing under oath that 9 there was no evidence of asbestos or 10 Tremolite in Johnson's Baby Powder, correct? 11 MR. BERNARDO: Object to the 12 form of the question. 13 THE WITNESS: I did not review 14 any specific documents, but, again, the 15 people that I had answer these questions were 16 the right people to answer them and most 17 knowledgeable. And... 18 BY MR. C. PLACITELLA: 19 Q. Who's the person who told you that 20 there was no evidence of asbestos in 21 Johnson's -- or Tremolite in Johnson's talc 22 that you based your certification under 23 penalty of perjury on? 24 Who is that person? 25 MR. BERNARDO: Object to the</p>	<p style="text-align: right;">Page 125</p> <p>1 form of the question. 2 THE WITNESS: I really don't 3 remember what specific person answered the 4 specific questions that were involved in a 5 specific interrogatory for a specific 6 Complaint. 7 BY MR. C. PLACITELLA: 8 Q. Well, was it a scientist or a 9 lawyer? 10 A. No, it was always a scientist. 11 Q. Okay. Who? 12 Who told you that, that there was 13 never any evidence whatsoever? 14 A. The different scientists that I 15 worked with through the years. As I said, 16 there was not one specific one that was 17 always the answer for. 18 These -- these were based on not 19 just one particular case. These would be 20 studies, and research, and different 21 experiments and everything that were going 22 on, ongoing. So it wasn't just, Aha, there's 23 a question here, let's go find the answer. 24 We were -- as a company, this was 25 our responsibility to be doing all the time.</p>

32 (Pages 122 to 125)

<p style="text-align: right;">Page 126</p> <p>1 Q. Am I correct that ultimately what 2 was provided and what you swore to was 3 decided by the Johnson &amp; Johnson lawyers -- 4 MR. BERNARDO: Object to the 5 form of the question. 6 BY MR. C. PLACITELLA: 7 Q. -- correct? 8 A. No. The responses were provided 9 by, again, the experts in response to the 10 particular questions of the Complaint. 11 Q. Ma'am, the lawyers ultimately 12 decided what was going to be communicated in 13 lawsuits related to baby powder, not you, 14 correct? 15 A. It's not me or the lawyers. It's 16 the excerpts for the particular question. 17 MR. C. PLACITELLA: All right. 18 Can we go to video, please? 19 THE VIDEOTAPE OPERATOR: Stand 20 by. Okay. 21 (At which time the following 22 audio recording is played for the witness.) 23 "QUESTION: So the lawyers made 24 a determination as to what was going to be 25 communicated and what was not going to be</p>	<p style="text-align: right;">Page 127</p> <p>1 communicated, it was not you; is that fair? 2 "UNIDENTIFIED COUNSEL: Object 3 to the form of the question. 4 "You may answer. 5 "THE WITNESS: They -- since it 6 was a legal matter, they were the appropriate 7 person to make the final decisions." 8 (At which time the audio 9 playback is concluded.) 10 BY MR. C. PLACITELLA: 11 Q. Do you recall giving that 12 testimony? 13 A. That was me in the video. 14 Q. Okay. In the answers to 15 interrogatories that you swore to, did you 16 ever mention the names of any of the 17 scientists that you said provided the 18 information that there was no asbestos, 19 evidence of asbestos in the Johnson &amp; Johnson 20 talc? 21 MR. BERNARDO: Object to the 22 form of the question. 23 THE WITNESS: Are you referring 24 to the specific interrogatories? 25 BY MR. C. PLACITELLA:</p>
<p style="text-align: right;">Page 128</p> <p>1 Q. Anytime. 2 I couldn't find any, so I'm asking 3 you if you have any recollection. 4 A. If -- if the question asked for a 5 specific person, it was provided. 6 Q. So unless it was asked for a 7 specific person, you never provided the basis 8 for your verification that there was no 9 evidence of asbestos in Johnson's Baby Powder 10 in lawsuits involving Johnson &amp; Johnson 11 talc -- 12 MR. BERNARDO: Object. 13 BY MR. C. PLACITELLA: 14 Q. -- correct? 15 MR. BERNARDO: Object to the 16 form of the question. 17 THE WITNESS: There -- again, 18 if there was a question where they required a 19 specific person's name, yes. Other than 20 that, there was no need to. 21 BY MR. C. PLACITELLA: 22 Q. Okay. So you, Johnson &amp; Johnson, 23 when you were verifying discovery in lawsuits 24 involving Johnson &amp; Johnson talc, you did not 25 have any scientist certify that the</p>	<p style="text-align: right;">Page 129</p> <p>1 information provided under oath was true and 2 accurate, correct? 3 You never did that? 4 A. No, there was no need to. 5 Q. What they did is they had the 6 person from Marketing just sign the 7 interrogatories without ever reviewing a 8 single document, correct? 9 A. No, that's -- 10 MR. BERNARDO: Object to the 11 form of the question. 12 THE WITNESS: That's incorrect. 13 As I explained to you, that the appropriate 14 person would be answering the question, that 15 these weren't just some people who just 16 happened to be down the hall. The specific, 17 whether it was a scientist, whoever was 18 necessary to answer the question. 19 BY MR. C. PLACITELLA: 20 Q. But as Johnson &amp; Johnson sits here 21 today, they can't identify a single scientist 22 who provided the information that was put in 23 sworn discovery responses that -- for the 24 basis for there was no evidence of asbestos 25 in Johnson &amp; Johnson talc, correct?</p>

<p style="text-align: right;">Page 130</p> <p>1 MR. BERNARDO: Object to the 2 form of the question. 3 THE WITNESS: There definitely 4 was basis for that. We had many different 5 scientists. I believe you've spoken to one 6 of them, Dr. Hopkins. 7 BY MR. C. PLACITELLA: 8 Q. That wasn't my question. 9 As Johnson &amp; Johnson sits here 10 today under oath on behalf of the 11 corporation, you can't identify a single 12 scientist that provided information that 13 justified your swearing under oath that there 14 was no evidence whatsoever of asbestos in any 15 Johnson &amp; Johnson talc product, correct? 16 MR. BERNARDO: Object to the 17 form of the question. 18 THE WITNESS: As I said, there 19 were no names that required it. So asking 20 for different complaints, different 21 interrogatories, I could sit here and give 22 you a lot of different names. I just 23 mentioned one for you. 24 BY MR. C. PLACITELLA: 25 Q. Oh, so you spoke to Dr. Hopkins in</p>	<p style="text-align: right;">Page 131</p> <p>1 responding -- and certifying answers to 2 interrogatories; is that what you're saying? 3 A. No. As I explained earlier, my 4 role was not to speak directly to the 5 internal experts. My role was to suggest and 6 direct counsel to speak to those experts. 7 And they may have had those conversations. 8 It would be different people for different 9 responses. 10 Q. Okay. So now we're getting 11 somewhere. 12 When you verified the 13 interrogatories under oath, you never had a 14 conversation with any of the scientists, 15 correct? 16 A. Not for that specific case, but I 17 have worked with those scientists -- 18 Q. No, ma'am. 19 A. -- 30 years and so I knew that they 20 would be the right person. 21 Q. All right. So that's -- that's -- 22 that's where I'm -- let's be very specific 23 here. When you certified interrogatories 24 under penalty of perjury indicating that 25 there was no asbestos or no evidence of</p>
<p style="text-align: right;">Page 132</p> <p>1 asbestos in any Johnson &amp; Johnson talc 2 product, you, Nancy Musco, never had a 3 conversation with any scientist in that 4 regard, correct? 5 MR. BERNARDO: Object to the 6 form of the question. 7 THE WITNESS: As I said, I had 8 many conversations with them throughout my 9 everyday work. And that is why I asked them 10 to speak to counsel to respond to that. 11 BY MR. C. PLACITELLA: 12 Q. All right, all right. That's not 13 my question, ma'am. 14 I'm saying when you had to answer 15 and certify a specific question, is there any 16 evidence of asbestos in Johnson's Baby 17 Powder, you, in answering that question never 18 spoke to a single scientist, correct? 19 MR. BERNARDO: Object to the 20 form of the question. 21 THE WITNESS: Again, not in 22 relation to that specific question. But 23 throughout my tenure at Johnson &amp; Johnson, 24 yes, I did. 25 BY MR. C. PLACITELLA:</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. Okay. But in answering discovery 2 under oath and swearing to the veracity of a 3 statement provided that there was no evidence 4 of asbestos in Johnson's Baby Powder, in that 5 capacity you never spoke to a single 6 scientist, correct? 7 MR. BERNARDO: Object to the 8 form of the question. 9 THE WITNESS: There was no need 10 for me to have a conversation with them at 11 that particular time, because I was familiar 12 with what they knew and understood. And I 13 knew what their answers would be. 14 BY MR. C. PLACITELLA: 15 Q. Let me ask -- 16 MR. C. PLACITELLA: Can you 17 read my question back, please? 18 (At which time the following 19 question is read: 20 "QUESTION: But in answering 21 discovery under oath and swearing to the 22 veracity of a statement provided that there 23 was no evidence of asbestos in Johnson's Baby 24 Powder, in that capacity you never spoke to a 25 single scientist, correct?")</p>

34 (Pages 130 to 133)

<p style="text-align: right;">Page 134</p> <p>1 MR. BERNARDO: Object to the 2 form of the question. 3 BY MR. C. PLACITELLA: 4 Q. Can you answer that question, 5 please? 6 A. As I said, for that specific -- a 7 specific answer, I did not have a 8 conversation. 9 My role was to ensure that counsel 10 was speaking to the correct person to answer 11 it. 12 The reason that I went with those 13 people was because of those many 14 conversations I had throughout my tenure. 15 Q. Okay. 16 A. I spoke to them often. 17 Q. What was my question, ma'am? 18 A. You asked me if I spoke with them 19 each time that there was a question. No, I 20 did not. I spoke to them many times 21 throughout my tenure. 22 Q. Okay. And the -- what was 23 ultimately included in an answer, a discovery 24 response came through Johnson &amp; Johnson's 25 lawyers, correct?</p>	<p style="text-align: right;">Page 135</p> <p>1 MR. BERNARDO: Object. 2 BY MR. C. PLACITELLA: 3 Q. In other words, the chain of 4 information was that the scientists provided 5 the information to Johnson &amp; Johnson's 6 lawyers and then Johnson &amp; Johnson put 7 that -- lawyers put that information down in 8 response to discovery and then you certified 9 that it was true and accurate, correct? 10 A. Yes, the process would be that the 11 counsel would have conversations with the 12 expert. The expert would provide their 13 answers, and counsel compile it all and then 14 provided it back to whomever requested it. 15 But they did not change the answer or address 16 the answer, no. 17 Q. "No," what? 18 A. No, they -- they were the ones who 19 put it all together to communicate it to 20 whomever had requested it originally. But it 21 was the experts who provided, the internal 22 experts who provided the answers. 23 Q. When you swore under oath that 24 there was no evidence whatsoever of asbestos 25 in Johnson's Baby Powder, that was based upon</p>
<p style="text-align: right;">Page 136</p> <p>1 an answer that was put down by the lawyers 2 who spoke to the experts, correct? 3 MR. BERNARDO: Object to form 4 of question. 5 THE WITNESS: Everybody I 6 worked with, we knew the company's position. 7 I verified that everything that was written 8 there was consistent with that position. 9 BY MR. C. PLACITELLA: 10 Q. When you say "company's position," 11 what do you mean by that? 12 A. That there is no asbestos in the 13 cosmetic talc used for Johnson's Baby Powder. 14 Q. There's no evidence of asbestos, 15 there never was and there never will be; 16 isn't that the company position? 17 A. Yes, in the cosmetic talc used for 18 Johnson's Baby Powder. 19 Q. You -- excuse me. 20 It was -- I'm looking at your 21 answer to P -- I want to go to Musco-1, it 22 was your position in responding to discovery 23 under oath that there were never any -- there 24 was no evidence, no studies and no reports 25 indicating that there was asbestos in any</p>	<p style="text-align: right;">Page 137</p> <p>1 Johnson &amp; Johnson Baby Powder product, 2 correct? 3 MR. BERNARDO: Object to the 4 form of the question. 5 THE WITNESS: Could you repeat 6 that question? 7 MR. C. PLACITELLA: Can you 8 read it back, please? 9 BY MR. C. PLACITELLA: 10 Q. And when I say "you," I mean 11 Johnson &amp; Johnson. 12 (At which time the following 13 question is read: 14 "QUESTION: I'm looking at your 15 answer to P -- I want to go to Musco-1, it 16 was your position in responding to discovery 17 under oath that there was no evidence, no 18 studies and no reports indicating that there 19 was asbestos in any Johnson &amp; Johnson Baby 20 Powder product, correct?") 21 THE WITNESS: That's correct. 22 BY MR. C. PLACITELLA: 23 Q. Okay. And that's what was told to 24 you by Dr. Hopkins, correct? 25 A. It wasn't a question of just told</p>

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 to me. We discussed the various documents 2 that you had presented. My purpose of the 3 conversation with Dr. Hopkins was to reaffirm 4 that he was familiar with everything, that 5 there was nothing new that plaintiffs had 6 provided, and that he was familiar with all 7 the different paperwork and documents. 8 Q. So, as you sit here today, in 9 preparing for this deposition, you were not 10 aware that Dr. Hopkins in trial, under oath, 11 testified that there were, in fact, reports 12 or studies indicating there was asbestos in 13 Johnson &amp; Johnson talc, correct? 14 MR. BERNARDO: Object to the 15 form of the question. 16 BY MR. C. PLACITELLA: 17 Q. You're not aware of that? 18 A. I'm not aware specifically what 19 Dr. Hopkins said or didn't say in his 20 testimony. 21 Q. And if he would have said that, 22 that would be completely at odds with what 23 you testified to here under oath and in 24 swearing to answers to interrogatories, true? 25 MR. BERNARDO: Object to the</p>	<p style="text-align: right;">Page 139</p> <p>1 form of the question. 2 THE WITNESS: I don't know what 3 Dr. Hopkins said, so I -- I can't comment on 4 that. But consistent that there is not 5 asbestos in the cosmetic talc used in 6 Johnson's Baby Powder. 7 BY MR. C. PLACITELLA: 8 Q. Your statement is there's no 9 evidence. And there never was any evidence 10 of asbestos in any Johnson &amp; Johnson cosmetic 11 talc product, correct? 12 A. Yes. 13 Q. That's your position? 14 A. Yes. 15 Q. And that's what you swore to 16 repeatedly under oath in answering 17 interrogatories and in your deposition, 18 correct? 19 MR. BERNARDO: Object to the 20 form of the question and the characterization 21 of prior testimony. 22 THE WITNESS: Yes. 23 BY MR. C. PLACITELLA: 24 Q. And that's what Johnson &amp; Johnson 25 asserts here, before this jury, under oath</p>
<p style="text-align: right;">Page 140</p> <p>1 that there was never any reports or evidence 2 that there was asbestos in any Johnson &amp; 3 Johnson talcum powder product, correct? 4 A. That's correct. 5 MR. C. PLACITELLA: Can we go 6 to the video, please? 7 THE VIDEOTAPE OPERATOR: Stand 8 by. 9 BY MR. C. PLACITELLA: 10 Q. Do you recognize the person on 11 this -- 12 THE VIDEOTAPE OPERATOR: Go 13 ahead. 14 BY MR. C. PLACITELLA: 15 Q. Do you recognize the person on this 16 screen? 17 A. Yes, I do. 18 Q. Who is that? 19 A. That's Dr. John Hopkins. 20 Q. Okay. I want to play you his 21 testimony. 22 MR. BERNARDO: Do you happen to 23 have the transcript she can read while 24 she's -- 25 MR. C. PLACITELLA: I'm going</p>	<p style="text-align: right;">Page 141</p> <p>1 to play it for you. 2 MR. BERNARDO: Well, I 3 understand that, I'm asking -- 4 (At which time the following 5 audio recording is played for the witness.) 6 "ANSWER: Repeat the question, 7 please. 8 "QUESTION: Yes. 9 "Do you know for a fact studies 10 have indicated asbestos in your talc, which 11 you claim is asbestos-free, true? 12 "ANSWER: Studies have 13 reported." 14 (At which time the audio 15 playback is concluded.) 16 (Unintelligible by reporter.) 17 (Reporter clarification.) 18 THE WITNESS: Yeah, it's hard 19 for me to understand, too. 20 MR. C. PLACITELLA: We'll do it 21 again. 22 (Off-the-record discussion.) 23 (At which time the following 24 audio recording is played for the witness.) 25 "ANSWER: Repeat the question,</p>

36 (Pages 138 to 141)

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<p>1 please.</p> <p>2 "QUESTION: Yes.</p> <p>3 "Do you know for a fact studies</p> <p>4 have indicated asbestos in your talc, which</p> <p>5 you claim is asbestos-free, true?</p> <p>6 "ANSWER: Studies have</p> <p>7 reported, yes."</p> <p>8 (At which time the audio</p> <p>9 playback is concluded.)</p> <p>10 BY MR. PLACITELLA:</p> <p>11 Q. Dr. Hopkins never -- Dr. Hopkins</p> <p>12 never told you that he testified in a court</p> <p>13 of law that, in fact, there were studies that</p> <p>14 reported asbestos in the talc that you say is</p> <p>15 asbestos-free?</p> <p>16 MR. BERNARDO: Object to the</p> <p>17 form.</p> <p>18 BY MR. C. PLACITELLA:</p> <p>19 Q. Correct?</p> <p>20 MR. BERNARDO: Object.</p> <p>21 BY MR. C. PLACITELLA:</p> <p>22 Q. You never saw this before?</p> <p>23 MR. BERNARDO: Object to the</p> <p>24 form of the question.</p> <p>25 THE WITNESS: I never saw this</p>	<p>1 before and he and I did not discuss his</p> <p>2 testimony, no.</p> <p>3 BY MR. C. PLACITELLA:</p> <p>4 Q. That's completely at odds with what</p> <p>5 you just testified to, isn't it?</p> <p>6 MR. BERNARDO: Object to the</p> <p>7 form of the question.</p> <p>8 THE WITNESS: No, it's not.</p> <p>9 BY MR. C. PLACITELLA:</p> <p>10 Q. How is it consistent?</p> <p>11 A. You know, again, I can't comment on</p> <p>12 what Dr. Hopkins said here. But, yeah, our</p> <p>13 understanding that there are studies, we're</p> <p>14 not saying that they are right or complete,</p> <p>15 but, yeah, there have been studies saying</p> <p>16 that.</p> <p>17 Q. All right. So there is evidence of</p> <p>18 asbestos in the Johnson &amp; Johnson Baby Powder</p> <p>19 and by the way of studies, correct?</p> <p>20 MR. BERNARDO: Object to the</p> <p>21 form of the question.</p> <p>22 THE WITNESS: You know, I'm not</p> <p>23 an expert on that, the studies, but</p> <p>24 Dr. Hopkins is and he can best explain that</p> <p>25 to you.</p>
Page 144	Page 145
<p>1 BY MR. C. PLACITELLA:</p> <p>2 Q. Ma'am, you said there were no</p> <p>3 studies, no evidence, but, in fact, we now</p> <p>4 know based on Dr. Hopkins' sworn testimony</p> <p>5 that there, in fact, are studies and that</p> <p>6 they were testified to by the corporate</p> <p>7 representative for Johnson &amp; Johnson before a</p> <p>8 jury, correct?</p> <p>9 A. Yes, we've just taken his testimony</p> <p>10 out of context. So I don't know what came</p> <p>11 before, after. And I don't want to comment</p> <p>12 on his testimony.</p> <p>13 Q. You know now for the first time,</p> <p>14 ma'am, that Johnson &amp; Johnson has stated</p> <p>15 under oath in a court of law, that despite</p> <p>16 what you said and what you testified to on</p> <p>17 behalf of Johnson &amp; Johnson here that there</p> <p>18 are, in fact, studies demonstrating that</p> <p>19 there was asbestos in the talc that you say</p> <p>20 was asbestos-free, correct?</p> <p>21 MR. BERNARDO: Object to the</p> <p>22 form of the question.</p> <p>23 THE WITNESS: I don't want to</p> <p>24 take Dr. Hopkins' testimony out of context.</p> <p>25 I don't know what came before or after. And</p>	<p>1 that would be unfair to all involved. And I</p> <p>2 don't want to -- I -- I can't comment on what</p> <p>3 he said.</p> <p>4 BY MR. C. PLACITELLA:</p> <p>5 Q. Well, isn't it unfair to all</p> <p>6 involved, ma'am, the fact that you never had</p> <p>7 a conversation with Dr. Hopkins about whether</p> <p>8 he knew that there were studies and he</p> <p>9 testified that there were studies; isn't that</p> <p>10 unfair?</p> <p>11 MR. BERNARDO: Object to the</p> <p>12 form of the question.</p> <p>13 THE WITNESS: Dr. Hopkins and I</p> <p>14 discussed, went through different research,</p> <p>15 experiments, studies that were done. I</p> <p>16 wanted to make sure that he was familiar with</p> <p>17 them, because he's the best person to talk</p> <p>18 about them, I'm not.</p> <p>19 BY MR. C. PLACITELLA:</p> <p>20 Q. So it was unfair to you, wasn't it,</p> <p>21 if Dr. Hopkins testified under oath that</p> <p>22 there were, in fact, studies showing there</p> <p>23 was asbestos in the Johnson &amp; Johnson product</p> <p>24 and that was never relayed to you, correct?</p> <p>25 That was unfair to you?</p>

37 (Pages 142 to 145)

<p style="text-align: right;">Page 146</p> <p>1 MR. BERNARDO: Object to the 2 form of the question. 3 THE WITNESS: No, it was not 4 unfair. 5 BY MR. C. PLACITELLA: 6 Q. Okay. You thought that was okay? 7 A. Again, I don't want to comment on 8 his testimony, because I don't know what came 9 before or after. 10 Q. Okay. Now -- 11 MR. C. PLACITELLA: Do you have 12 the chart? The chart, mm-hmm. 13 (Exhibit J&amp;J-488, Chart, is 14 marked for identification.) 15 BY MR. C. PLACITELLA: 16 Q. I'm going to show you what has been 17 marked Hopkin -- J&amp;J-488. 18 You've seen this before? 19 MR. C. PLACITELLA: You can -- 20 I only have two, they're big. 21 We'll go to Elmo, please. 22 BY MR. C. PLACITELLA: 23 Q. You have in front of you 24 Exhibit 488, which was marked as Exhibit 28 25 in Dr. Hopkins' deposition. Did you ever --</p>	<p style="text-align: right;">Page 147</p> <p>1 and you saw this the last time we were here, 2 correct? 3 A. I believe so. 4 Q. And after testifying -- and I think 5 the last time we were here you said that you 6 never had seen this chart before you gave 7 your deposition, correct? 8 A. That's correct. 9 Q. Okay. And you actually knew 10 nothing about this chart, correct? 11 A. I had not seen it before. 12 Q. And you know now that this chart 13 was prepared at the deposition of Dr. Hopkins 14 live at the deposition, you know that, 15 correct? 16 A. No, I don't know what it was used 17 for. 18 Q. Have you -- when you spoke to 19 Dr. Hopkins and you were preparing for this 20 deposition, did you review this chart with 21 him? 22 A. No, I did not. 23 Q. All right. Did you review the 24 chart at all? 25 A. No, I did not.</p>
<p style="text-align: right;">Page 148</p> <p>1 Q. So even though you were asked about 2 this chart in the last deposition, you took 3 no steps to -- in preparing for today's 4 deposition concerning the -- the veracity of 5 historical discovery responses to look at 6 this chart or any of the evidence mentioned 7 in this chart, correct? 8 MR. BERNARDO: Object, object 9 to the form of the question. 10 THE WITNESS: I did not look at 11 this specific chart. I looked at different 12 evidence, but I did not look at this specific 13 chart. 14 BY MR. C. PLACITELLA: 15 Q. Okay. And, for example, this chart 16 has the -- it's in chronological order, it 17 has the date; do you see that? 18 A. I see that, yes. 19 Q. The entity that did the test, 20 right, the author, correct? 21 A. I see that, yes. 22 Q. The test method, what was tested, 23 what the test actually revealed; do you see 24 that? 25 A. I see that.</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. Okay. Any comments that 2 Dr. Hopkins had concerning the chart? 3 A. I see Dr. Hopkins' -- 4 Q. Do you see that? 5 A. -- comments. 6 Q. Okay. 7 (Reporter clarification.) 8 THE WITNESS: I see 9 Dr. Hopkins' comments. 10 BY MR. C. PLACITELLA: 11 Q. All right. But in testifying under 12 oath that there was no evidence whatsoever of 13 asbestos in any Johnson &amp; Johnson talc 14 product, you never discussed the chart that 15 he created with him concerning that evidence, 16 correct? 17 MR. BERNARDO: Object to the 18 form of the question. 19 THE WITNESS: As I said, I did 20 not discuss the specific chart. 21 BY MR. C. PLACITELLA: 22 Q. And this was not a chart that you 23 were shown in preparation for your deposition 24 today, correct? 25 MR. BERNARDO: Object to the</p>

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<p>1 form of the question. 2 THE WITNESS: No, it was not. 3 MR. C. PLACITELLA: Black book. 4 BY MR. C. PLACITELLA: 5 Q. This was marked at your last 6 deposition as Musco-2. It's heavy, so I only 7 brought one copy. 8 Do you, do you -- do you want to 9 flip through it? 10 A. I see what it is. 11 Q. Do you recall this book? 12 A. I know that there was a large book. 13 Yes. 14 Q. And what's in that book? 15 A. It looks like an awful lot of 16 scientific information. 17 Q. And did you discuss with anybody 18 from your -- between your last deposition and 19 this deposition the information that's in 20 that book? 21 A. I don't know exactly what's in this 22 book. I certainly didn't go through this. 23 But, yes, we -- we discussed specific 24 information. I had conversations with 25 Dr. Hopkins about specific studies. And I</p>	<p>1 would assume that they're in this book. 2 Q. Okay. And prior to your deposition 3 last time, although you were the person that 4 swore under oath concerning Johnson &amp; 5 Johnson's historical discovery responses, you 6 had never seen a single one of those 7 documents marked in Musco-2, correct? 8 A. That's correct. My role wasn't to 9 look at the specific studies. 10 Q. Right. 11 A. But to ensure that the correct 12 people were response in -- responding. 13 Q. When you swore under oath that 14 there was no evidence whatsoever, no one ever 15 showed you any of the studies or documents 16 that are in Musco-2, correct? 17 A. I don't know everything that's in 18 here, but I did not look at any specific 19 studies in response to the depositions. 20 MR. C. PLACITELLA: Let's -- 21 give me 450. 22 MR. BERNARDO: When you're at a 23 stopping place for lunch, we've been going 24 about an hour. 25 MR. C. PLACITELLA: All right.</p>
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<p>1 BY MR. C. PLACITELLA: 2 Q. I want to show you what has been 3 marked as Exhibit 450. 4 MR. BERNARDO: I'm sorry, what 5 was the exhibit number, please? 6 MR. C. PLACITELLA: 450. 7 (Exhibit J&amp;J-450, Letter, is 8 marked for identification.) 9 BY MR. C. PLACITELLA: 10 Q. 450 is a letter from George Lee to 11 Roger Miller concerning the Joly case. Do 12 you see that? 13 A. I see it says that, yes. 14 Q. And it's dated December 3, 1982, 15 correct? 16 A. Correct. 17 Q. This is not a document that was 18 provided to you by counsel, correct? 19 MR. BERNARDO: Object to the 20 form of the question. 21 THE WITNESS: That's correct. 22 BY MR. C. PLACITELLA: 23 Q. But you know about this case from 24 your own knowledge, right? 25 A. No. As I told you earlier, I</p>	<p>1 didn't remember Joly at all. 2 Q. Okay. Bruce Semple, MD, he was the 3 Medical Director? 4 A. Yes, he was. 5 Q. And you had dealings with him, 6 correct? 7 A. Yes, I did. 8 Q. Okay. And George Lee is who? 9 A. I believe he was one of our 10 research scientists. 11 Q. Okay. And Roger Miller was the 12 President of Windsor Minerals owned by 13 Johnson &amp; Johnson, correct? 14 A. That's my recollection, yes. 15 Q. Okay. And what the research 16 scientist is writing to Dr. Miller and asking 17 if he has any information concerning ongoing 18 studies; do you see that? 19 A. That's what it says. 20 Q. Did you in your research on 21 historical discovery responses come across 22 any of the ongoing studies that were 23 referenced here in this letter? 24 A. I'm not familiar with what -- what 25 he's referencing here, so...</p>

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<p style="text-align: right;">Page 154</p> <p>1 MR. C. PLACITELLA: Give me 2 448. 3 (Exhibit J&amp;J-448, Memo, is 4 marked for identification.) 5 MR. C. PLACITELLA: I want to 6 switch it, this is 448. 7 BY MR. C. PLACITELLA: 8 Q. 448 is a May 10, 1985 memo entitled 9 Ingestions and Inhalations - Johnson's Baby 10 Powder, January 1982 to January 1985. 11 Do you see that? 12 A. Yes, I do. 13 Q. And you are copied, correct? 14 A. Yes, I am. 15 Q. And the Medical Director for 16 Johnson &amp; Johnson is copied, correct? 17 A. Yes. 18 Q. And who is Mr. McTernan? 19 A. She is the -- 20 Q. Or she. 21 A. -- Director of Regulatory. 22 Q. So she's the Director of 23 Regulatory? 24 A. That's correct. 25 Q. And this references the Joly case,</p>	<p style="text-align: right;">Page 155</p> <p>1 doesn't it? 2 A. The Joly case is indicated here, 3 yes. 4 Q. All right. And the Complaint 5 number for the Joly case is 02043; do you see 6 that? 7 A. That's what it says, yes. 8 Q. Okay. Now, you know, do you not, 9 that Johnson &amp; Johnson actually acknowledged 10 internally that Joly who filed a lawsuit 11 against Johnson &amp; Johnson was injured from 12 Johnson &amp; Johnson's talc; you know that, 13 correct? 14 MR. BERNARDO: Object to the 15 form of the question. 16 THE WITNESS: I don't know 17 that, no. 18 MR. C. PLACITELLA: Okay. Can 19 you give me 452, please? 20 (Exhibit J&amp;J-452, Memo, is 21 marked for identification.) 22 BY MR. C. PLACITELLA: 23 Q. 452 is a June 17, 1985 memo from 24 Patricia Mills, who said was in charge of 25 Regulatory?</p>
<p style="text-align: right;">Page 156</p> <p>1 A. No. 2 Q. Who she was what -- who? 3 [Verbatim] 4 A. She was a nurse reporting to me at 5 the time in Medical Services. 6 Q. Okay. And copied on this 7 memorandum is you -- 8 A. Correct. 9 Q. -- correct? 10 And the memo went to the Medical 11 Director at Johnson &amp; Johnson, correct? 12 A. Bruce Semple, that's correct. 13 Q. All right. 14 MR. BERNARDO: I'm not going to 15 interrupt each time, because I just want a 16 running objection to the use of these 17 documents. My position, it's outside the 18 scope of the notice -- 19 MR. C. PLACITELLA: Oh, yeah, 20 it's way outside the scope. 21 MR. BERNARDO: She can -- 22 MR. C. PLACITELLA: It's 23 directly related. 24 MR. BERNARDO: Let me finish my 25 objection.</p>	<p style="text-align: right;">Page 157</p> <p>1 And she can answer in her 2 personal capacity. We're not tendering her 3 to talk about specific lawsuits -- 4 MR. C. PLACITELLA: Well, we'll 5 let the judge. 6 MR. BERNARDO: I think that's 7 what happens with objections. 8 MR. C. PLACITELLA: Okay, okay. 9 BY MR. C. PLACITELLA: 10 Q. And the title is Ingestions and 11 Inhalations Requiring Medical Attention, 12 Johnson's Baby Powder; do you see that? 13 A. That's what it says. 14 Q. And under Complaint 2 -- 02043, 15 there's one for inhalation; do you see that? 16 A. That's correct. 17 Q. And that's Miss Joly, correct? 18 A. That's what it comes back to, yes, 19 seems to be. 20 Q. All right. That's the person who 21 filed a lawsuit against you, correct? 22 A. I assume it's the same person. 23 Q. Right. 24 And it says, History: Consumer 25 used Johnson's Baby Powder for years since</p>

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<p>1 unable to use deodorant due to allergies. 2 Do you see that? 3 A. That's what it says. 4 Q. And what it says is, Findings: 5 Scarring of lung tissue was noted on X-ray. 6 Pulmonary function studies revealed very 7 severe obstruction of the small airways. 8 Consumer did not respond to bronchodilators. 9 Talc crystals were identified in the 10 consumer's sputum. 11 Correct? 12 A. That's what -- 13 MR. BERNARDO: Object to the 14 form of the question. 15 THE WITNESS: That's what it 16 says. 17 BY MR. C. PLACITELLA: 18 Q. Correct? 19 And -- and under Outcome, this is 20 the memo to the Medical Director of Johnson &amp; 21 Johnson and copied to you, under Outcome it 22 talks about lung damage due to long-term 23 inhalation of talc from Johnson's Baby 24 Powder, correct? 25 A. That's what it says.</p>	<p>1 Q. Okay. And nowhere in any memo did 2 Johnson &amp; Johnson dispute that, correct? 3 MR. BERNARDO: Object to the 4 form of the question. Again, outside the 5 scope of the notice. 6 THE WITNESS: I don't know if 7 that was the purpose of this memo. 8 BY MR. C. PLACITELLA: 9 Q. You have no recollection of this 10 information being provided by the person who 11 worked for you to the Medical Director of 12 Johnson &amp; Johnson ever being disputed, 13 correct? 14 MR. BERNARDO: Object to the 15 form of the question. 16 THE WITNESS: I -- until you 17 put this in front of me, I didn't remember 18 anything about Joly. It was, what? 19 Thirty-three years ago. 20 BY MR. C. PLACITELLA: 21 Q. Right. 22 And you didn't -- and you were not 23 provided any of the information from the Joly 24 case in order to -- to testify here today, 25 correct?</p>
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<p>1 MR. BERNARDO: Object to the 2 form of the -- of the question. 3 THE WITNESS: That's correct. 4 BY MR. C. PLACITELLA: 5 Q. Okay. Clearly, your lawyers knew 6 about the Joly case, correct? 7 MR. BERNARDO: Object to the 8 form of the question. 9 THE WITNESS: I do not know. 10 MR. C. PLACITELLA: Well, can 11 you give me the privilege log, please. 12 Can we go to the Elmo, please? 13 BY MR. C. PLACITELLA: 14 Q. So I'm going to go back to the log. 15 See where it says here, 1/16/1982? 16 A. Yes. 17 Q. Okay. And there's information from 18 George Lee. He wasn't a lawyer, by the way, 19 right? 20 A. No. 21 Q. Okay. And it went to John Beidler. 22 Who's that? 23 A. I believe he's an attorney. 24 Q. And it was also copied to the 25 Medical Director, correct?</p>	<p>1 A. That's what it says. 2 Q. All right. And it talks about 3 memos concerning the Joly case, correct? 4 A. That's what it says. 5 Q. Okay. In fact, there are many 6 memos related to the Joly case, correct? 7 A. The name is mentioned a few times, 8 yes. 9 Q. So, clearly, if your lawyers put 10 this on a log of information they weren't 11 going to turn over, they had knowledge of the 12 Joly case, correct? 13 MR. BERNARDO: Object to the 14 form of the question. 15 THE WITNESS: I don't know what 16 the purpose of this log is. 17 BY MR. C. PLACITELLA: 18 Q. Well, you're the person testifying 19 on historical discovery responses and you 20 have no idea what a privilege log purpose is? 21 MR. BERNARDO: Object to the 22 form of the question. 23 THE WITNESS: I'm not a lawyer. 24 BY MR. C. PLACITELLA: 25 Q. You don't know that certain</p>

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<p style="text-align: right;">Page 162</p> <p>1 information is being withheld in this case 2 under claim of privilege related to lawsuits 3 against Johnson &amp; Johnson? 4 MR. BERNARDO: Object to the 5 form of the question, beyond the scope of the 6 notice. 7 She can answer in her 8 individual capacity. 9 BY MR. C. PLACITELLA: 10 Q. You're asking -- I'm asking you on 11 behalf of Johnson &amp; Johnson. 12 MR. BERNARDO: And I -- 13 BY MR. C. PLACITELLA: 14 Q. Johnson &amp; Johnson does not know 15 what a privilege log is? 16 MR. BERNARDO: This witness -- 17 BY MR. C. PLACITELLA: 18 Q. In responding to historical 19 discovery responses, Johnson &amp; Johnson does 20 not know when responding to discovery whether 21 it is withholding information or not; is that 22 what you're saying? 23 MR. BERNARDO: Object to the 24 form of the question. This witness is not 25 being tendered to explain or provide</p>	<p style="text-align: right;">Page 163</p> <p>1 information about privilege logs provided in 2 this litigation, that is not within the scope 3 of the notice. She can answer in her 4 individual capacity, but she's not here as a 5 corporate representative of Johnson &amp; Johnson 6 with respect to this question. 7 MR. C. PLACITELLA: With all 8 due respect, she's here on the historical 9 discovery responses provided by Johnson &amp; 10 Johnson in talc litigation. 11 So I'm going to ask the 12 question again. 13 BY MR. C. PLACITELLA: 14 Q. Johnson -- you, Johnson &amp; Johnson 15 are saying here under oath that you have no 16 idea that information was being withheld 17 under claim of privilege in the Joly case, 18 correct? 19 MR. BERNARDO: Object to the 20 form of the question. Same objection as 21 before. 22 You can answer in your 23 individual capacity, if you know. 24 THE WITNESS: I don't know. 25 BY MR. C. PLACITELLA:</p>
<p style="text-align: right;">Page 164</p> <p>1 Q. When you were being asked to 2 prepare for this deposition, even though 3 there was information that was withheld, so 4 Johnson &amp; Johnson's lawyers obviously know 5 that the case existed, they didn't supply you 6 with a single piece of paper related to the 7 Joly case, correct? 8 MR. BERNARDO: Object to the 9 form of the question. 10 THE WITNESS: I did not review 11 the Joly case, no. 12 BY MR. C. PLACITELLA: 13 Q. Even though the Johnson &amp; Johnson 14 Medical Director got a memo indicating that 15 Miss Joly was injured from Johnson &amp; Johnson 16 Baby Powder -- 17 MR. BERNARDO: Object -- 18 BY MR. C. PLACITELLA: 19 Q. -- correct? 20 MR. BERNARDO: Object to the 21 form of the question, same objection. 22 THE WITNESS: This is a memo 23 informing him of the case. 24 BY MR. C. PLACITELLA: 25 Q. Right.</p>	<p style="text-align: right;">Page 165</p> <p>1 And you were copied? 2 A. Yes, I was. 3 Q. And even though you were copied and 4 it involved the Medical Director at Johnson &amp; 5 Johnson, in preparing for today's deposition 6 no information was provided for you about 7 this case, which, by the way, predates any 8 case that's on your list, correct? 9 MR. BERNARDO: Object to the 10 form of the question. 11 THE WITNESS: There seemed to 12 be several questions there. Could you ask 13 that again? 14 BY MR. C. PLACITELLA: 15 Q. Well, let me ask you this, this 16 case was pending at least in 1982, correct? 17 A. 1982 is listed there. 18 Q. Right. 19 The first case on your list is from 20 what date? 21 1983, correct? 22 A. That's what I have, yes. 23 Q. All right. So Johnson &amp; Johnson's 24 attorneys had information in their possession 25 concerning a lawsuit filed by someone that</p>

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<p style="text-align: right;">Page 166</p> <p>1 Johnson &amp; Johnson acknowledged internally was 2 hurt by baby powder and never showed you that 3 information in preparation for today's 4 deposition -- 5 MR. BERNARDO: Object to the 6 form -- 7 BY MR. C. PLACITELLA: 8 Q. -- correct? 9 MR. BERNARDO: -- of the 10 question. 11 THE WITNESS: My understanding 12 is that this is not within the scope, and I 13 don't have the answer. 14 MR. C. PLACITELLA: Okay. We 15 can take a break now. 16 MR. BERNARDO: Before we go on 17 break, with all due respect, I just want to 18 make an objection on the record, for the 19 record. 20 Mr. Placitella, you and I had 21 numerous conversations about this deposition. 22 And, in fact, we filed a motion for 23 protective order with respect to this 24 deposition. We withdrew the motion with the 25 understanding that this deposition would</p>	<p style="text-align: right;">Page 167</p> <p>1 focus on discovery responses of the Johnson &amp; 2 Johnson Defendants. 3 The company made significant 4 efforts to try and identify what could 5 reasonably be identified. You and I spoke 6 about exactly what we did and what we didn't 7 do for purposes of this deposition. 8 We also spoke about the fact 9 that we would try and prepare this witness. 10 And we wanted copies of responses that would 11 be the subject. 12 We in good faith, I, in 13 particular, provided you with a letter that 14 specified what we did identify pursuant to 15 those responses. 16 You, in response provided us 17 some documents that the witness looked at the 18 other day. 19 We did not discuss any of these 20 types of questions. This witness is not 21 prepared to address them, as you can see, 22 because this was not at all what our 23 understanding of what this deposition would 24 be. 25 I note that we have been now</p>
<p style="text-align: right;">Page 168</p> <p>1 going for several hours and you've not yet 2 shown the witness a single discovery response 3 regarding the asbestos content of talc. 4 I know you have your position 5 and you're welcome to set it on the record, 6 but because these depositions end up in other 7 places, I just wanted to clarify what our 8 position is. 9 MR. C. PLACITELLA: First of 10 all, your statement is incomplete. 11 What I said was that I would 12 provide you with any documents that I found 13 outside of what you had already produced 14 related to litigation, which I did. So if I 15 did an independent examination and found it 16 in some court file, I gave it to you. 17 I also indicated and we had an 18 agreement that any documents that were 19 produced by Johnson &amp; Johnson were fair game 20 for this witness. And any documents that 21 were used in any trials or depositions of 22 Johnson &amp; Johnson representatives were fair 23 game. 24 There is nothing unfair. This 25 is a -- information on what did Johnson &amp;</p>	<p style="text-align: right;">Page 169</p> <p>1 Johnson provide in terms of historical 2 discovery responses. And it is highly 3 relevant, highly relevant that there were 4 numerous cases that involved Johnson Baby 5 Powder and Johnson's talc powder where no 6 information is known by Johnson &amp; Johnson 7 according to this witness. She is Johnson &amp; 8 Johnson. She had the responsibility. She is 9 the one who said she ordered the searches. 10 And, clearly, there was information available 11 in this case, directly related, because it's 12 right on your privilege log to Johnson &amp; 13 Johnson cases that were never shown to her 14 and that were produced. 15 Moreover, it is troubling that 16 there are documents related to actual cases 17 involving Johnson &amp; Johnson Baby Powder that 18 this witness was aware of and not prepared to 19 testify to. 20 So that's the completion of the 21 statement. 22 MR. BERNARDO: Actually, I 23 think it isn't, Mr. Placitella. And we could 24 go on, and we won't for some time. But I 25 will just say that I disagree with what</p>

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<p>1 you're characterizing, what we discussed, 2 because we did have a specific discussion 3 about what the purpose of this deposition 4 was. But if we need to, we'll just let the 5 judge address that. I -- suffice it to say 6 that I disagree with what you're saying. 7 MR. C. PLACITELLA: Well, let's 8 do that. 9 Okay. How long do you need for 10 lunch? 11 THE VIDEOTAPE OPERATOR: The 12 time is 12:53 p m. Off the record. 13 (Luncheon recess.) 14 THE VIDEOTAPE OPERATOR: The 15 time is now 1:51 p m. We are on the record. 16 MR. C. PLACITELLA: Okay. Can 17 you give me 453? 18 (Exhibit J&amp;J-453, Document 19 entitled George Lee's Talc Files, is marked 20 for identification.) 21 BY MR. C. PLACITELLA: 22 Q. 453 is a document entitled George 23 Lee's Talc Files, Transferred to CIS 24 July 1988. 25 And George Lee I think you told me</p>	<p>1 was what? 2 A. My recollection is he worked in 3 R&amp;D. 4 Q. Okay. And what's CIS? 5 A. Don't know. 6 Q. And according to this document, as 7 of July 1988, George Lee had a file on the 8 Joly case, correct? 9 A. I have never seen this document 10 before. So all I see that it says Joly talc 11 suit. 12 Q. Right. 13 A. I don't know what he had or didn't 14 have. 15 Q. So where's that information? 16 MR. BERNARDO: Object to the 17 form of the question. 18 THE WITNESS: I do not know. 19 BY MR. C. PLACITELLA: 20 Q. Was that information from the Joly 21 talc suit ever made available to you when you 22 were certifying interrogatory answers on 23 behalf of Johnson &amp; Johnson? 24 A. If there was information available, 25 I would have reviewed it. I don't know what</p>
Page 172	Page 173
<p>1 information was or was not -- 2 Q. I thought you told me you never -- 3 A. -- involved in this. 4 Q. I thought you told me you never 5 reviewed the information? 6 A. I didn't. 7 Q. So -- 8 (Reporter clarification.) 9 THE WITNESS: Didn't, did not. 10 BY MR. C. PLACITELLA: 11 Q. Okay. So although there was a Joly 12 talc suit file in 1988, Johnson &amp; Johnson has 13 no idea where it is -- 14 MR. BERNARDO: Object -- 15 BY MR. C. PLACITELLA: 16 Q. -- correct? 17 MR. BERNARDO: Object to the 18 form of the question. 19 THE WITNESS: I do not know 20 where it is, no. 21 BY MR. C. PLACITELLA: 22 Q. Now, one of the cases that you 23 certified interrogatory answers in was the 24 Krushinski case, correct? 25 A. That's correct.</p>	<p>1 Q. Okay. And... 2 MR. C. PLACITELLA: Give me 3 277. 4 (Exhibit J&amp;J-277, Answers to 5 Plaintiffs' Supplemental Interrogatories, is 6 marked for identification.) 7 MR. C. PLACITELLA: By the way, 8 can you go to the Elmo for a second? 9 BY MR. C. PLACITELLA: 10 Q. So in responding to -- into 11 discovery in the course of litigation, did 12 Johnson &amp; Johnson see a difference in saying 13 there is no evidence versus there is 14 evidence, but we, Johnson &amp; Johnson, don't 15 believe it's reliable; do you see that as 16 different? 17 MR. BERNARDO: Object to the 18 form of the question. 19 THE WITNESS: It's hard for me 20 to answer, taken out of context, but, yes, 21 they're different sentences. 22 MR. C. PLACITELLA: Can we mark 23 this next, please? 24 (Exhibit P-4, Handwritten 25 document, is marked for identification.)</p>

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<p>1 MR. C. PLACITELLA: 277, 2 please. 3 BY MR. C. PLACITELLA: 4 Q. Do you recognize 277 as a set of 5 interrogatories that you certified as true 6 and accurate under oath in the Krushinski 7 case? 8 A. Yes, this appears to be that. 9 Q. And I'm going to direct you to 10 interrogatory number 19, which asks if you 11 were basically ever sued before in a 12 Johnson's Baby Powder case; do you see that? 13 A. I'd have to read it -- 14 Q. Go ahead. 15 A. -- to see exactly. 16 Q. Go ahead. 17 A. (At which time the Witness reviews 18 the document.) 19 Okay. 20 Q. Do you see that? 21 A. Yes, I do. 22 Q. And in response to whether you were 23 sued before in a Johnson's Baby Powder case, 24 you list the Selby case and the Gambino case, 25 correct?</p>	<p>1 MR. BERNARDO: Object to the -- 2 object to the form of the question. 3 THE WITNESS: No, I didn't say 4 that's the only time we were sued. I said 5 that was what I had interrogatories. 6 BY MR. C. PLACITELLA: 7 Q. Well, it says, Has Johnson &amp; 8 Johnson ever received notice of any claim, 9 correct? 10 A. Yes. 11 Q. And the only two cases that you 12 listed were Selby and Gambino, correct? 13 A. No, I have all these cases here. 14 Q. No, no. 15 A. I -- 16 Q. Ma'am, I'm asking you -- 17 A. Oh. 18 Q. -- when you certified under oath, 19 under penalty of perjury whether Johnson &amp; 20 Johnson was ever sued in a baby powder case, 21 you certified under oath that the only two 22 cases were the Selby case and the Gambino 23 case, correct? 24 MR. BERNARDO: Object, object 25 to the form of the question. It's beyond the</p>
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<p>1 scope of the notice, insofar as it's not a 2 question that has anything to do with the 3 asbestos content of talc. 4 But go ahead and answer if 5 you can. 6 MR. C. PLACITELLA: Well, we'll 7 get there. 8 MR. BERNARDO: I'm sure you 9 will. 10 BY MR. C. PLACITELLA: 11 Q. Go ahead. 12 A. Those two cases are listed in the 13 response, yes. 14 Q. Okay. You never mentioned the Joly 15 case, correct? 16 A. There is no mention of it here, no. 17 Q. Why not? 18 MR. BERNARDO: Same objection. 19 THE WITNESS: I think because 20 it was a different kind of case. 21 BY MR. C. PLACITELLA: 22 Q. Well, it was a pulmonary 23 fibrosis -- 24 A. That's not what they were 25 asking for.</p>	<p>1 Q. -- case, wasn't it? 2 A. I think it was talcosis, I'm not 3 sure. 4 Q. Well, it asks for anything on 5 talcosis, doesn't it? 6 If they developed talcosis or 7 fibrosis, right? 8 That's what was asked of you. 9 A. That's what it says, yes. 10 Q. So why didn't you include the Joly 11 case? You certainly knew about it, you 12 worked on it. 13 MR. BERNARDO: Object to the 14 form of the question. 15 THE WITNESS: There may not 16 have been any more information, I -- to 17 provide. 18 BY MR. C. PLACITELLA: 19 Q. Ma'am, I just showed you documents 20 from the Johnson &amp; Johnson's file, did I not? 21 Showing that Joly filed a lawsuit in 1982 22 before the Gambino case and that the 23 Johnson &amp; Johnson Medical Director, as well 24 as yourself, knew about it? 25 MR. BERNARDO: I object to the</p>

45 (Pages 174 to 177)

<p style="text-align: right;">Page 178</p> <p>1 form of the question. 2 BY MR. C. PLACITELLA: 3 Q. Right? 4 MR. BERNARDO: Beyond the scope 5 of the notice. 6 THE WITNESS: Our -- my 7 understanding is that the Joly case was not 8 within the scope of the notice. 9 BY MR. C. PLACITELLA: 10 Q. Ma'am, why didn't you answer 11 correctly under oath interrogatory 19 in the 12 Krushinski case and indicate that you, in 13 fact, knew about the Joly case? 14 MR. BERNARDO: Object to -- 15 BY MR. C. PLACITELLA: 16 Q. Why not? 17 MR. BERNARDO: Object to the 18 form of the question, beyond the scope of the 19 notice. 20 THE WITNESS: Again, my 21 understanding is it's not within the scope of 22 the notice. 23 BY MR. C. PLACITELLA: 24 Q. Scope of what notice? 25 A. The notice that you presented to</p>	<p style="text-align: right;">Page 179</p> <p>1 have me here today and to speak about. 2 Q. Ma'am, I'm asking you, you swore 3 under oath, under penalty of perjury that 4 these were the only two cases. And I'm 5 asking you why you didn't mention the Joly 6 case? 7 MR. BERNARDO: Object to the 8 form of the question. 9 THE WITNESS: Again, it's not 10 within the scope. 11 BY MR. C. PLACITELLA: 12 Q. So you didn't answer the 13 information under oath, because it's not in 14 the scope of the notice here? 15 A. I -- I don't know why it was not 16 mentioned specifically in here. My 17 understanding was we were not to talk -- 18 going to be talking about these other cases, 19 Joly that you keep talking about. I don't 20 know why it was not specifically mentioned 21 here. 22 Q. Well, it certainly should have 23 been, right? 24 MR. BERNARDO: Object to the 25 form of the question.</p>
<p style="text-align: right;">Page 180</p> <p>1 BY MR. C. PLACITELLA: 2 Q. You swore under oath that you knew 3 about it. 4 MR. BERNARDO: Object to the 5 form of the question. 6 THE WITNESS: I can't say 7 whether it should have been or not. 8 BY MR. C. PLACITELLA: 9 Q. I mean, your Medical Director 10 actually had a memo to him saying that, what? 11 That the person had fibrosis? 12 Do we have it? 13 Here, let's go back and look at it. 14 Scarring of the lung tissue was 15 noted on X-ray. Consumer did not respond to 16 bronchodilators. 17 You certainly knew about it, 18 correct? 19 MR. BERNARDO: Object to the 20 form of the question. 21 THE WITNESS: My name is on the 22 memo, yes. 23 MR. C. PLACITELLA: And by the 24 way, can you give me that other document 25 while we're here. No, the one on the ad.</p>	<p style="text-align: right;">Page 181</p> <p>1 (Exhibit P-5, Ad, is marked for 2 identification.) 3 BY MR. C. PLACITELLA: 4 Q. So I read this, I read this ad. I 5 think it was in the New York Times and you, 6 Johnson &amp; Johnson states, that if you had any 7 reason to believe talc was unsafe, it would 8 never have been on your shelves, correct? 9 A. That's correct. 10 Q. Okay. So, but the Medical Director 11 had notice as far back as 1985 that someone 12 using your baby powder had scarring of the 13 lung that was evident on X-ray, very severe 14 obstruction of small airways, did not respond 15 to bronchodilators and actually found your 16 talc in the consumer's sputum, but you never 17 took it off the market, right? 18 MR. BERNARDO: Object to the 19 form of the question. 20 THE WITNESS: It was not taken 21 off market, no. 22 BY MR. C. PLACITELLA: 23 Q. Now, back to the Krushinski case, 24 if you can go to interrogatory number 17. In 25 interrogatory number 17 it says, Describe in</p>

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<p style="text-align: right;">Page 182</p> <p>1 detail all processes, procedures and testing 2 performed upon the talc used in the 3 manufacture of Johnson's Baby Powder to 4 reduce or eliminate the existence of 5 asbestos, tremolite or other contaminants in 6 Johnson's Baby Powder. 7 Correct? 8 A. That's what it says, yes. 9 Q. And you verified under oath that to 10 the best of defendant's knowledge talc used 11 in the manufacture of Johnson &amp; Johnson's 12 Baby Powder never contained asbestos in any 13 form, or tremolite. Defendant's sources of 14 talc were selected for their lack of 15 contaminants and further, testing was 16 performed over a significant number of years 17 by outside laboratories which verified that 18 defendant's talc sources did not contain 19 asbestos or tremolite. 20 Do you see that? 21 A. Yes, I do. 22 Q. Okay. Do you recall swearing to 23 that under oath? 24 A. That's -- that's part of the 25 interrogatories, yes.</p>	<p style="text-align: right;">Page 183</p> <p>1 Q. Okay. 2 MR. C. PLACITELLA: Now, can 3 you give me Dr. Hopkins' testimony? 4 (Exhibit P-3, Trial transcript 5 of John Hopkins, Ph.D., is marked for 6 identification.) 7 BY MR. C. PLACITELLA: 8 Q. I'm going to give you the chance to 9 look at the testimony of Dr. Hopkins that's 10 given during the trial that's going on now, 11 specifically about your answer under oath. 12 I'll give you a chance to take a look at it. 13 And we've marked it P-3. Give it to counsel 14 first. 15 MR. BERNARDO: And I'm going to 16 object your asking the witness to review 17 somebody's trial testimony in real time to 18 determine what was said, particularly since 19 it was a long trial with a lot of testimony. 20 And I don't think any of us know here whether 21 there was additional to this or otherwise. 22 But subject to that 23 objection... 24 Do you have another copy of 25 that, Chris?</p>
<p style="text-align: right;">Page 184</p> <p>1 MR. C. PLACITELLA: I have one 2 copy, but I put it up there so everyone can 3 see it. 4 BY MR. C. PLACITELLA: 5 Q. When they're talking about -- here 6 and I'll put the copy up right next to it. 7 MR. BERNARDO: Can you give her 8 an opportunity to read it? 9 BY MR. C. PLACITELLA: 10 Q. Yeah, take your time, take your 11 time. 12 A. (At which time the Witness reviews 13 the document.) 14 Q. What do you want to look at it? 15 A. Well, I was looking at the left 16 side -- 17 Q. No, I want you to look at the 18 transcript. 19 A. -- and then it changed. 20 MR. BERNARDO: He wants you to 21 look at the whole section that pertains to 22 that answer so you can answer. 23 THE WITNESS: Yeah. 24 So where are we starting? 25 BY MR. C. PLACITELLA:</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. Under 105, where it talks about 2 your interrogatory number 17. "Those are the 3 answers," "they are," "turn back to number 4 17;" do you see it? 5 A. Just a minute. I want to get the 6 full context of it. Okay. 7 (At which time the Witness reviews 8 the document.) 9 MR. BERNARDO: Let me also 10 object. I'm not sure how much the witness 11 has read. And you certainly can ask her 12 questions. But I recall that that testimony 13 was interrupted by a long encounter with 14 Judge Seligman and that it was subsequently 15 re-addressed again. 16 So, again, I'm raising my 17 objection to asking this witness here in real 18 time to read trial testimony that is fairly 19 lengthy and comment on it. 20 MR. C. PLACITELLA: Well, the 21 problem is that she said she consulted 22 Dr. Hopkins and relied upon him. So I want 23 to see whether Dr. Hopkins was telling her 24 the truth. 25 MR. BERNARDO: Well...</p>

47 (Pages 182 to 185)

<p style="text-align: right;">Page 186</p> <p>1 MR. C. PLACITELLA: Or whether 2 Johnson &amp; Johnson ever conveyed to this 3 witness the truth -- 4 MR. BERNARDO: Well -- 5 MR. C. PLACITELLA: -- in -- in 6 getting this deposition prepared. 7 MR. BERNARDO: The truth is in 8 the entirety of Mr. Hopkins' testimony. 9 MR. C. PLACITELLA: Okay. 10 MR. BERNARDO: Not the two or 11 three pages that the witness has just had the 12 opportunity to read. 13 And I don't think your 14 characterization of the testimony earlier 15 today is the truth, but... 16 MR. C. PLACITELLA: Well, you 17 know what, you can ask her anything you want 18 on redirect. 19 MR. BERNARDO: I'm just 20 commenting on the process here and the 21 procedure and I object to that. 22 MR. C. PLACITELLA: Okay. 23 BY MR. C. PLACITELLA: 24 Q. Did you not testify when you 25 started that the person you relied upon in</p>	<p style="text-align: right;">Page 187</p> <p>1 preparing for today's deposition, one of them 2 was Dr. Hopkins; did you say that? 3 A. Yes. 4 Q. Okay. And he was also one of the 5 people that was relied upon in swearing to 6 interrogatories under oath, correct? 7 A. He has -- he -- we may have 8 consulted with him with different times, 9 since I -- as I told you earlier, I don't 10 remember exactly. 11 Q. Right. 12 And in your sworn answers to 13 interrogatories under oath, you say, To the 14 best of defendant's knowledge, in 15 interrogatory 7 [verbatim], talc used in the 16 manufacture of Johnson &amp; Johnson's Baby 17 Powder never contained asbestos in any form, 18 or tremolite. 19 Correct? 20 A. You just said number 7? 21 Q. 17. 22 A. Oh, 17, okay. 23 Q. Then it goes on to say, Defendant's 24 sources of talc were selected for their lack 25 of contaminants and were further tested --</p>
<p style="text-align: right;">Page 188</p> <p>1 and further, testing was performed over a 2 significant number of years by outside 3 laboratories who verified the defendant's 4 talc sources did not contain asbestos or 5 tremolite. 6 That's what you swore to, right? 7 A. That's what it says, yes. 8 Q. Okay. And Dr. Hopkins under oath 9 before a jury just this past month is 10 directed to your response, your sworn 11 response, number 17; do you see that? 12 A. It appears that way. It's hard for 13 me to follow. 14 Q. Well, if you look it says, it says, 15 As we read -- the first sentence here, I want 16 to read the second sentence of that answer. 17 And does not that track exactly 18 your answer, where it says, Defendant's 19 sources of talc were selected for their lack 20 of contaminants? 21 It's the exact duplicate, correct? 22 A. It's the same sentence, yes. 23 Q. Right. 24 And he says it goes to number 17, 25 which is your interrogatory answer, correct?</p>	<p style="text-align: right;">Page 189</p> <p>1 MR. BERNARDO: Object to the 2 form of the question. 3 THE WITNESS: Yes. 4 BY MR. C. PLACITELLA: 5 Q. Okay. And he then asks, And we 6 know, do we not -- we know, do we not, 7 Dr. Hopkins, that the Battelle 8 Laboratories -- do you know who they are? 9 A. No, I don't. 10 Q. No one ever told you about the 11 Battelle Laboratories? 12 A. I -- I know the names, but I'm not 13 going to know which laboratory is which. 14 Q. Okay. At least for the Italian 15 talc, actually verified that the Italian talc 16 tanning source of talc [verbatim] -- for 17 Johnson &amp; Johnson did contain tremolite, 18 correct? 19 And his answer was, the Battelle 20 reports from the '50s did mention trace 21 tremolite. 22 And the question is, And it did so 23 in hundreds of tests, correct? 24 And his answer was, Yes. In 25 several hundred tests, they reported trace</p>

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<p>1 tremolite. 2 Correct? 3 A. That's what it says, yes. 4 Q. And despite that information in the 5 possession of Johnson &amp; Johnson that several 6 hundred tests showed trace tremolite, 7 Johnson &amp; Johnson asked you to certify under 8 oath that there was never any evidence 9 whatsoever of tremolite, correct? 10 MR. BERNARDO: Object, object 11 to the form of the question, the 12 characterization of the response. 13 THE WITNESS: I mean, I think 14 it's -- it's important to understand that, 15 just like you're taking the testimony out of 16 context, you're taking this particular 17 question out of context. And as for 18 anything, I would like to look at the 19 Complaint it relates to, rather than just a 20 question on its own. And that's what I did 21 in my preparation. 22 BY MR. C. PLACITELLA: 23 Q. Ma'am, I'm going to ask you the 24 question again. 25 Do you believe me -- do you believe</p>	<p>1 that an honest and forthright witness can 2 provide a simple answer to a simple question? 3 MR. BERNARDO: Object to the 4 form of the question. It's not an 5 appropriate question. 6 THE WITNESS: To a simple 7 question, yes. 8 BY MR. C. PLACITELLA: 9 Q. Okay. And I am asking you, ma'am, 10 that when you swore under oath, under penalty 11 of perjury in the Krushinski case that there 12 was no evidence whatsoever of tremolite in 13 the Johnson products, Johnson &amp; Johnson never 14 told you about the tests they had as 15 testified to by Dr. Hopkins that there were 16 hundreds of tests showing tremolite in the 17 talc used in Johnson -- you were never told 18 that, correct? 19 MR. BERNARDO: Object to the 20 form of the question. 21 THE WITNESS: I think it's 22 important to understand whether we're talking 23 about tremolite or tremolite asbestos, which 24 is what I wanted to make clear when I looked 25 at this Complaint. And this Complaint</p>
Page 192	Page 193
<p>1 specifically mentions the type of asbestos, 2 one included as tremolite asbestos. 3 I mean, it is confusing, I will 4 grant that. But at the time this litigation 5 was talking about tremolite, we were always 6 talking about tremolite asbestos. 7 BY MR. C. PLACITELLA: 8 Q. Ma'am, what's the difference 9 between tremolite and tremolite asbestos? 10 A. Obviously, a big difference. 11 Q. What's the difference, ma'am? 12 What's your understand -- what is 13 Johnson -- 14 A. One is asbestos and one is not. 15 Q. Ma'am, what is the difference 16 between tremolite and tremolite asbestos? 17 What is Johnson &amp; Johnson's 18 understanding of the difference, since you 19 said that? 20 A. One is asbestos and one is not. 21 Q. What makes it different? 22 MR. BERNARDO: Object. 23 BY MR. C. PLACITELLA: 24 Q. What differentiation, asbestos 25 tremolite versus non-asbestos tremolite?</p>	<p>1 A. I -- I can't go into the 2 configuration. I know it's the different 3 shapes and all, but one is asbestos and one 4 is not. 5 Q. Ma'am, tell me what exactly you 6 know when you swore under oath that there was 7 no evidence of tremolite, what you understood 8 the difference to be? 9 A. My understanding is that this -- 10 Q. Ma'am, when you swore under oath -- 11 MR. BERNARDO: Object to the 12 form. She -- 13 BY MR. C. PLACITELLA: 14 Q. -- when you answered the 15 interrogatories -- 16 MR. BERNARDO: Chris, you asked 17 her a question and she started answering and 18 you interrupted her. 19 BY MR. C. PLACITELLA: 20 Q. When you answered under oath in the 21 Krushinski case, what was your understanding 22 at that time between the difference between 23 tremolite and tremolite asbestos? 24 MR. BERNARDO: Object to the 25 form of the question.</p>

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<p style="text-align: right;">Page 194</p> <p>1 THE WITNESS: As I just said to 2 you, the difference is one is asbestos and 3 one is not. And at the time of this 4 interrogatory, which was specifically 5 answered in response to a Complaint, it was 6 dealing with tremolite asbestos. 7 BY MR. C. PLACITELLA: 8 Q. This answer asks you the existence 9 of asbestos or tremolite, does it not; isn't 10 that the question? 11 A. Yeah, and I admitted, it's 12 confusing. It could have been worded better. 13 Q. Could have been worded better? 14 A. Yes. 15 Q. How do you word mistruths better? 16 MR. BERNARDO: Object to the 17 form of the question. 18 THE WITNESS: It's not a 19 mistruth. 20 BY MR. C. PLACITELLA: 21 Q. So you believe that when you said 22 there's never any -- there's no evidence and 23 it never contained any form of tremolite, 24 that was an accurate statement? 25 MR. BERNARDO: Object to the</p>	<p style="text-align: right;">Page 195</p> <p>1 form of the question and to the statement, 2 the characterization of the words on the 3 paper there. 4 THE WITNESS: Yeah, that's not 5 what it said. It says any form of asbestos 6 or tremolite. 7 BY MR. C. PLACITELLA: 8 Q. Correct. 9 So when we're talking about 10 asbestos, they were saying any form, and then 11 they asked about tremolite in addition, 12 correct? 13 The question did not ask you 14 asbestos tremolite, it's asked about 15 tremolite, correct? 16 A. My understanding and our 17 understanding at the time is we were talking 18 about tremolite asbestos, because I don't 19 know -- I -- would have been talking about 20 non-asbestos tremolite. We were -- the 21 litigations would address tremolite asbestos, 22 that's why I went back to the Complaint to 23 make sure because it is confusing. 24 Q. So your testimony today is that 25 when you provided the interrogatory answers</p>
<p style="text-align: right;">Page 196</p> <p>1 in the Krushinski case, you understood the 2 difference between what you thought was 3 tremolite and tremolite asbestos in every 4 way, correct? 5 MR. BERNARDO: Object to the 6 form of the question. 7 THE WITNESS: I'm saying that I 8 understood the word tremolite to mean 9 tremolite asbestos, because it was a 10 litigation about that. 11 BY MR. C. PLACITELLA: 12 Q. Okay. And when you answered that, 13 you -- you -- did you know what fibrous 14 tremolite was? 15 A. That's -- that's kind of beyond 16 what I understand. I don't know. 17 Q. Well, did you know that under 18 Johnson &amp; Johnson's definition of fibrous 19 tremolite that that's asbestos, did you know 20 that? 21 MR. BERNARDO: Object to the 22 form of the question. 23 THE WITNESS: I -- that's not 24 my specialty, I don't know. 25 BY MR. C. PLACITELLA:</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. The truth of the matter is you 2 don't know anything about tremolite, what's 3 fibrous, what's not fibrous, what's asbestos 4 and what's not asbestos, true? 5 A. Well, I had conversations with 6 Dr. Hopkins specifically about this, because, 7 as I said, it's confusing. And I believe he 8 addressed it if you saw his entire testimony. 9 Q. Okay. So you did read his entire 10 testimony? 11 A. I did not read his entire -- I 12 read -- I read his testimony. But do I 13 remember everything that's in there? No. 14 Q. Oh, so you were given Dr. Hopkins' 15 testimony in preparation for today's 16 deposition? 17 A. Yes, as I told you earlier, I did 18 read some of his deposition and some of his 19 testimony. Not all of it, nor do I remember 20 everything that was said. 21 Q. Do you remember reading his 22 testimony in the Levitt case that I put in 23 front of you? 24 A. No, I don't remember. 25 MR. BERNARDO: Mr. Placitella,</p>

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<p style="text-align: right;">Page 198</p> <p>1 for the record, we provided you with a box 2 of -- which will clarify what she did and 3 didn't read of the testimony that she read. 4 BY MR. C. PLACITELLA: 5 Q. Okay. So it's your testimony that 6 when you said no evidence of tremolite, you 7 meant asbestos tremolite; that's your 8 testimony? 9 A. Yes. 10 Q. Okay. And at that point in time 11 you had no information whatsoever available 12 to Johnson &amp; Johnson that any test done of 13 any Johnson &amp; Johnson Baby Powder ever found 14 asbestos containing tremolite; is that 15 your -- is that your testimony? 16 A. No. My testimony is that there was 17 no tremolite asbestos. 18 Q. Ma'am, when you signed under oath, 19 under penalty of perjury this answer, is it 20 your testimony that Johnson &amp; Johnson had no 21 evidence whatsoever of any tests showing that 22 there was asbestos containing tremolite in 23 its baby powder or talc products? 24 A. Yes, the position is that there is 25 no tremolite asbestos in the cosmetic talc of</p>	<p style="text-align: right;">Page 199</p> <p>1 Johnson's Baby Powder. 2 Q. And is it your position that when 3 you signed this under oath, Johnson &amp; Johnson 4 had no evidence in its possession that there 5 was fibrous tremolite in the Johnson's talc 6 products? 7 MR. BERNARDO: Object to the 8 form of the question. 9 THE WITNESS: As I said 10 earlier, I can't get into fibrous or not 11 fibrous. I don't know what that means. 12 BY MR. C. PLACITELLA: 13 Q. Well, in making this shouldn't you 14 know that when -- when it's referred to as 15 fibrous tremolite, Johnson &amp; Johnson 16 considered that asbestos? 17 Shouldn't you know that? 18 A. No. Again, that's why we have 19 experts to be able to answer those things. 20 Q. Okay. Now, when I asked you 21 questions about this very question in our 22 last deposition, you never, ever mentioned, 23 did you, anything about a difference in your 24 perception between asbestos and non-asbestos 25 tremolite, correct?</p>
<p style="text-align: right;">Page 200</p> <p>1 A. I don't remember exactly what I 2 said. 3 Q. Do I need to show it to you? 4 A. If you would like to. 5 Q. Okay. Well, we'll take a break and 6 I'll show it to you. 7 And it was after you met with the 8 lawyers, now you came up with the explanation 9 that there's a difference when you answered 10 the question between asbestos tremolite and 11 non-asbestos tremolite, correct? 12 MR. BERNARDO: Object to the 13 form of the question. 14 THE WITNESS: No, I -- I didn't 15 come up with this. Actually, you asked me a 16 lot of different questions last time we met. 17 And there was some of those things that I 18 didn't have answers to. So I don't like 19 being like that, and I wanted to clarify 20 things. So I did ask to speak -- to see 21 different documents and that's why I had the 22 conversation, one of the reasons I had the 23 conversation with Dr. Hopkins. 24 BY MR. C. PLACITELLA: 25 Q. Okay. Well, we'll do some -- okay,</p>	<p style="text-align: right;">Page 201</p> <p>1 let's talk about -- we'll come back to that. 2 By the way, so you looked -- you 3 looked at the Krushinski discovery responses. 4 What other cases did you actually look at the 5 discovery responses? 6 A. Well, as indicated, we looked at 7 Selby and Krushinski. 8 Q. That's -- those are the only two? 9 A. Those are the only two that they 10 had discovery responses available for. 11 Q. So out of the thousands of cases 12 that Johnson &amp; Johnson has been involved in 13 since 1972, you only looked at two sets of 14 discovery responses in order to prepare for 15 today's deposition? 16 MR. BERNARDO: Object to the -- 17 BY MR. C. PLACITELLA: 18 Q. Is that fair? 19 MR. BERNARDO: Object to the 20 form of the question. 21 THE WITNESS: I don't know 22 whether there were thousands, but it is our 23 understanding according to the notice that 24 you provided, and these were the discovery 25 responses that were available.</p>

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<p>1 BY MR. C. PLACITELLA: 2 Q. So, to your knowledge, from the 3 time Johnson &amp; Johnson became involved in 4 baby powder litigation from 1972 until the 5 present -- up till the time you're preparing 6 for this deposition, there are only two sets 7 of discovery responses made available to you? 8 MR. BERNARDO: Object to the 9 form of the question. 10 BY MR. C. PLACITELLA: 11 Q. Is that right? 12 A. There are only two that I looked 13 at, yes. 14 Q. Okay. Now -- 15 MR. C. PLACITELLA: Give me 16 294. 17 (Exhibit J&amp;J-294, Deposition 18 transcript of Roger N. Miller, is marked for 19 identification.) 20 MR. BERNARDO: What was the 21 number, Chris? 22 MR. C. PLACITELLA: 294. 23 MR. BERNARDO: Thank you. 24 BY MR. C. PLACITELLA: 25 Q. 294 is the deposition of Roger</p>	<p>1 Miller given in the Westfall case. 2 Do you see that? 3 A. That's what it says, yes. 4 Q. And Roger Miller was the President 5 of Windsor Minerals, right? 6 A. I believe so, yes. 7 Q. And did your lawyers ever share 8 this deposition with you? 9 A. No, I did not see this. 10 Q. Okay. And if you look at the 11 second page, do you see that Johnson &amp; 12 Johnson had actually had lawyers there at 13 this deposition for Windsor? 14 A. I guess that's what that means. 15 Q. Okay. And when is the first time 16 that Johnson &amp; Johnson was given notice of 17 the Westfall case? 18 MR. BERNARDO: Object to the 19 form of the question, beyond the scope of the 20 notice. 21 You can answer in your 22 individual capacity, if you know. 23 THE WITNESS: I don't know. 24 (Exhibit J&amp;J-483, Memo, is 25 marked for identification.)</p>
Page 204	Page 205
<p>1 BY MR. C. PLACITELLA: 2 Q. 483 is a memo from July 5, 1981 on 3 Johnson &amp; Johnson stationery, entitled Talc 4 Suit, Westfall versus Metropolitan Talc. 5 Do you see that? 6 A. That's what it says, yes. 7 Q. And it says, Background: 8 Metropolitan Talc (our former source of 9 domestic ground Italian talc) is being sued 10 by survivors of Mr. Westfall. His autopsy 11 report alleges his death was due to 12 mesothelioma. 13 Do you see that? 14 A. That's correct, that's what it 15 says. 16 Q. At some point in time, Johnson &amp; 17 Johnson actually became a defendant in the 18 Westfall case, did it not? 19 A. I don't know. 20 Q. Okay. 21 A. I do know that this involved 22 industrial talc, that's all I know. 23 Q. It involved industrial talc out of 24 the Johnson mine, correct? 25 A. Yes.</p>	<p>1 Q. Okay. And in addition to the 2 Italian talc? 3 MR. BERNARDO: Object to the 4 form of the question. Again, beyond the 5 scope of the notice. 6 If you know in your individual 7 capacity. 8 THE WITNESS: I don't know. 9 BY MR. C. PLACITELLA: 10 Q. Well, it says "Italian talc" right 11 on the top, right? It's on your letterhead. 12 A. Is there a question? I'm sorry. 13 Q. Yeah. It says Italian talc right 14 on the top, right? 15 A. Background, it says our former 16 source of domestic ground Italian talc. 17 Q. Right. 18 And you're aware, I assume, that 19 the -- there were scientists who testified 20 with Johnson &amp; Johnson's lawyers present that 21 they found asbestos in the Johnson mine, 22 correct? You knew that? 23 MR. BERNARDO: Object to the 24 form of the question, beyond the scope of the 25 notice. Not answering in her corporate</p>

52 (Pages 202 to 205)

<p style="text-align: right;">Page 206</p> <p>1 capacity. 2 (Reporter clarification.) 3 MR. BERNARDO: Sorry. 4 Objecting it's beyond the scope of the 5 notice, the witness is not responding as a 6 corporate representative on this issue. 7 MR. C. PLACITELLA: Well, 8 that's -- that's your -- we'll see what the 9 judge says. Okay? 10 MR. BERNARDO: I'm just making 11 my objection and noting it. 12 BY MR. C. PLACITELLA: 13 Q. You knew that, right? 14 A. I don't know that. 15 Q. So you never knew before you came 16 here today that Johnson &amp; Johnson's lawyers 17 sat in a deposition where the scientists who 18 did the tests on the Johnson &amp; Johnson mine 19 said they found asbestos in the mine; you 20 never knew that? 21 MR. BERNARDO: Object to the 22 form of the question, same objection. 23 THE WITNESS: I don't know. 24 MR. C. PLACITELLA: Give me 25 172.</p>	<p style="text-align: right;">Page 207</p> <p>1 (Exhibit J&amp;J-172, Deposition 2 transcript of Glenn A. Hemstock, is marked 3 for identification.) 4 BY MR. C. PLACITELLA: 5 Q. I'll show you what has been marked 6 J&amp;J-172. This is the deposition of Glenn 7 Hemstock taken in the Westfall case. 8 MR. BERNARDO: And same 9 objection to asking the witness about 10 depositions. It's beyond the scope of the 11 notice. And she's not read the deposition. 12 BY MR. C. PLACITELLA: 13 Q. And it's versus Windsor Minerals as 14 one of the defendants, correct? 15 A. That's what it says. 16 Q. Okay. And if you go to the third 17 page, it actually indicates that Johnson &amp; 18 Johnson's general counsel was at the 19 deposition, right? 20 MR. BERNARDO: Object to the 21 form of the question. 22 THE WITNESS: A name is listed 23 there, yes. 24 BY MR. C. PLACITELLA: 25 Q. So he certainly knew and Johnson &amp;</p>
<p style="text-align: right;">Page 208</p> <p>1 Johnson certainly knew what information was 2 revealed in that deposition, correct? 3 A. The lawyer's name is listed there, 4 yes. 5 Q. Did you ever have any dealings with 6 John Beidler? 7 A. I knew of him, yes. 8 Q. Did he ever tell you that he 9 attended depositions where scientists 10 testified they found asbestos in the Vermont 11 mines once owned by Johnson &amp; Johnson? 12 MR. BERNARDO: Object to the 13 form of the question. 14 THE WITNESS: No, he did not. 15 (Exhibit J&amp;J-173, Continuation 16 deposition transcript of Glenn Hemstock, is 17 marked for identification.) 18 BY MR. C. PLACITELLA: 19 Q. Okay. Let me show you 173, which 20 is the continuation of Dr. Hemstock's 21 deposition. 22 I'll show you on the second page, 23 you'll see that Johnson &amp; Johnson's lawyers 24 are there at the deposition again? 25 MR. BERNARDO: Same objection</p>	<p style="text-align: right;">Page 209</p> <p>1 with respect to all of these deposition 2 transcripts. 3 THE WITNESS: I see them there, 4 yes. 5 BY MR. C. PLACITELLA: 6 Q. And I flipped to page 17 of the 7 deposition. You see where the scientist is 8 asked, "Now, you testified that your 9 department has tested both the processed talc 10 and the raw talc ore from the Emtal mine for 11 the presence of chrysotile asbestos; is that 12 correct? 13 "ANSWER: Yes. 14 "Has your department in its 15 research found chrysotile asbestos in both 16 processed talc and raw ore from the Emtal 17 mine? 18 "ANSWER: Yes." 19 Do you see that? 20 MR. BERNARDO: Same objection. 21 THE WITNESS: I see it says 22 that, yes. 23 BY MR. C. PLACITELLA: 24 Q. That information was never relayed 25 to you as the person who was either</p>

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<p>1 testifying here today or certified 2 interrogatory answers on behalf of Johnson &amp; 3 Johnson, correct? 4 A. I have not seen this before, no. 5 MR. C. PLACITELLA: Can you 6 give me 436, please? 7 (Exhibit J&amp;J-436, Deposition 8 transcript of Peter N. Gale, is marked for 9 identification.) 10 BY MR. C. PLACITELLA: 11 Q. I'm going to show you the 12 deposition of Peter Gale, who is another 13 scientist who testified in the case. 14 MR. BERNARDO: Same objection 15 with respect to this testimony, as also with 16 respect to the other testimonies. 17 BY MR. C. PLACITELLA: 18 Q. All right. And you can see on the 19 second page that the lawyers for Johnson &amp; 20 Johnson were at this deposition as well? 21 A. I see the names listed, yes. 22 Q. Okay. And if you go to page 19, he 23 talks about the studies he did himself. He 24 says, "What analysis did you run on the 25 second round of studies?"</p>	<p>1 "WITNESS: Scanning electron 2 microscopy, transmission electron microscopy, 3 selected area diffraction. 4 "Where did you perform those tests? 5 "Georgia Tech. 6 "When were those tests performed? 7 "Late fall '78 and January and 8 February of '79, I believe. 9 "Do you recall today what those 10 tests revealed? 11 "I recall that there were fibers 12 found in those talcs, yes. 13 "Did you identify the nature, 14 mineralogic nature of the fibers that were 15 found? 16 "ANSWER: Yes. 17 "What was the nature of those 18 fibers? 19 "ANSWER: I determined those fibers 20 were chrysotile fibers. 21 "QUESTION: How did you determine 22 those fibers were chrysotile fibers? 23 "ANSWER: Using selected area 24 electron diffraction in conjunction with 25 transmission electron microscopy."</p>
Page 212	Page 213
<p>1 Do you see that? 2 MR. BERNARDO: Object to the 3 form of the question. And object to your 4 reading into the transcript -- 5 BY MR. C. PLACITELLA: 6 Q. Do you see that? 7 MR. BERNARDO: -- excerpts of 8 deposition testimony. 9 THE WITNESS: I see that, yes. 10 BY MR. C. PLACITELLA: 11 Q. And before today and in responding 12 to all these interrogatories under oath, no 13 one ever told you from Johnson &amp; Johnson, 14 even though you knew the lawyers, that there 15 was testimony of scientists under oath that 16 found asbestos in the Vermont mines once 17 owned by Johnson &amp; Johnson, correct? 18 A. We did not review these 19 testimonies. 20 Q. So is the answer correct, you were 21 never told? 22 A. We did not review these specific 23 testimonies. 24 MR. C. PLACITELLA: Now, give 25 me 441.</p>	<p>1 BY MR. C. PLACITELLA: 2 Q. Let me ask you the question this 3 way to keep it moving, do you know that that 4 case was settled confidentially under oath -- 5 MR. BERNARDO: Object to the 6 form of the question. 7 BY MR. C. PLACITELLA: 8 Q. -- by Johnson &amp; Johnson? 9 A. I do not know that. 10 Q. Now, in the same year that these 11 scientists testified under oath with 12 Johnson &amp; Johnson lawyers present, you were 13 sued in the Gambino case, right? 14 MR. BERNARDO: Object to the 15 form of the question, beyond the scope of the 16 notice. 17 THE WITNESS: I don't know what 18 year what happened. 19 BY MR. C. PLACITELLA: 20 Q. Well, what did your chart say about 21 Gambino? 22 A. Gambino is listed as 1983. 23 Q. And that's the date of this 24 deposition, correct? 25 A. I have to go back to the deposition</p>

54 (Pages 210 to 213)

Page 214	Page 215
<p>1 and see that. 2 Q. 1983? 3 A. Okay. 4 Q. Okay. So in the same years that 5 the scientists testified that the mines once 6 owned by Johnson &amp; Johnson contained 7 asbestos, you were sued in Middlesex County, 8 New Jersey in the Gambino case, correct? 9 MR. BERNARDO: Object to the 10 form of the question, beyond the scope of the 11 notice. This witness isn't being tendered as 12 a corporate representative on the subject of 13 litigation. 14 You can go ahead answer in your 15 personal capacity. 16 BY MR. C. PLACITELLA: 17 Q. Here, I put it up there for you, 18 it's 291; do you see it? 19 A. All I know is the years are the 20 same. 21 Q. Right. In Middlesex County, 22 New Jersey; do you see that? 23 A. I see it says that, yes. 24 Q. And it involved Johnson's Baby 25 Powder, correct?</p>	<p>1 A. I see it says that. 2 Q. And according to your earlier 3 testimony, your lawyers didn't have any other 4 information on Gambino to provide to you, 5 correct? 6 MR. BERNARDO: Object to the 7 form of the question. 8 THE WITNESS: There were no 9 discovery records. 10 MR. C. PLACITELLA: Okay. Can 11 you give me the... 12 BY MR. C. PLACITELLA: 13 Q. Well, I want to show you again the 14 log of documents not turned over. There were 15 plenty of documents related to the Gambino 16 case, you were just never shared them, were 17 you? 18 MR. BERNARDO: Object to the 19 form of the question. 20 BY MR. C. PLACITELLA: 21 Q. According to your own privilege 22 log, the -- the log that you put in this 23 courthouse, there were plenty of documents 24 related to the Gambino case -- 25 MR. BERNARDO: Object to the</p>
Page 216	Page 217
<p>1 form of the question. 2 BY MR. C. PLACITELLA: 3 Q. -- correct? 4 MR. BERNARDO: Are you pointing 5 to a discovery response in there, Chris? I 6 can't read it from here. 7 MR. C. PLACITELLA: I'm 8 point -- I'm pointing to your entry that 9 there were memorandums, memorandums, 10 memorandums, memorandums. 11 MR. BERNARDO: But you're not 12 pointing to a discovery response? I just 13 want to be able to see it. 14 BY MR. C. PLACITELLA: 15 Q. There were plenty of documents 16 never shared with you, that's all I'm asking. 17 MR. BERNARDO: Object to the 18 form of the question. 19 THE WITNESS: I was not shared 20 any interrogatories, no. 21 BY MR. C. PLACITELLA: 22 Q. Okay. And you see here who was 23 involved in defending the Gambino case. Who 24 is Donald Jones? 25 A. He's one of the scientists,</p>	<p>1 Johnson &amp; Johnson. 2 Q. And, also, Mr. Ashton was involved? 3 A. I see the names there. 4 Q. Well, Mr. Ashton certainly knew 5 about the testing that showed asbestos in 6 Johnson's Baby Powder, right? 7 MR. BERNARDO: Object to the 8 form of the question. Again, I object to 9 this whole line of questioning and asking 10 this witness about a privilege log generated 11 by lawyers in litigation, Chris. You know 12 that's inappropriate. You know it's not 13 within the scope of this notice. 14 MR. C. PLACITELLA: No, I think 15 it's totally within the scope. 16 MR. BERNARDO: I think it's 17 completely inappropriate. And you know this 18 witness is not here to address privilege 19 logs, lawsuits filed or other -- 20 MR. C. PLACITELLA: Okay. 21 MR. BERNARDO: -- kinds of 22 questions that you've been asking for an hour 23 now. 24 MR. C. PLACITELLA: Okay. 25 BY MR. C. PLACITELLA:</p>

55 (Pages 214 to 217)

<p style="text-align: right;">Page 218</p> <p>1 Q. What happened to Mr. Gambino's 2 case, do you know? Mrs. Gambino's case? 3 MR. BERNARDO: Object to the 4 form of the question, outside the scope of 5 the notice. 6 THE WITNESS: I don't know. 7 BY MR. C. PLACITELLA: 8 Q. It was non-suited, wasn't it? 9 MR. BERNARDO: Object to the 10 form of the question. 11 BY MR. C. PLACITELLA: 12 Q. Do know what non-suit means? 13 A. No, I do not. 14 Q. It means it was dismissed because 15 the information -- they didn't have the 16 information necessary to move forward. Did 17 you know that? 18 A. I told you, I did not know the 19 outcome. 20 Q. Did you -- did you know that your 21 lawyer stated in court in California 22 concerning the Gambino case that the lawsuit 23 was ultimately dismissed without 24 adjudication? 25 MR. BERNARDO: Object to the</p>	<p style="text-align: right;">Page 219</p> <p>1 form of the question. 2 BY MR. C. PLACITELLA: 3 Q. Did you know that? 4 MR. BERNARDO: Beyond the scope 5 of the notice. 6 THE WITNESS: I don't even know 7 what that means. 8 BY MR. C. PLACITELLA: 9 Q. Okay. And you didn't look at a 10 single document other than the Complaint 11 related to the Gambino case, correct? 12 A. I -- my understanding was that we 13 were to talk about discovery responses, and 14 there were no discovery responses. 15 Q. I want to get right to that now. 16 MR. C. PLACITELLA: Give me 17 188. 18 THE WITNESS: Where are we on 19 time, as far as a break? 20 MR. BERNARDO: You want to take 21 a break? 22 THE WITNESS: Yes, please. 23 MR. BERNARDO: Chris, we've 24 been -- we have been going about an hour. 25 Can we take --</p>
<p style="text-align: right;">Page 220</p> <p>1 MR. C. PLACITELLA: Can we take 2 less than a half hour break this time? 3 MR. BERNARDO: We have not been 4 taking half hour breaks. We try to be very 5 conscious. We came in four minutes after our 6 45-minute lunch. 7 MR. C. PLACITELLA: Okay. Take 8 a break. Go ahead. 9 THE VIDEOTAPE OPERATOR: The 10 time is 2:41 p m. Off the record. 11 (Brief recess.) 12 THE VIDEOTAPE OPERATOR: The 13 time is 2:58 p m. On the record. 14 BY MR. C. PLACITELLA: 15 Q. Okay. So in preparation for 16 today's deposition, did your -- or did you 17 review the information concerning the Edley 18 case? 19 A. I'm not familiar with that. 20 (Reporter clarification.) 21 MR. C. PLACITELLA: Edley, 22 E-d-l-e-y. 23 BY MR. C. PLACITELLA: 24 Q. You're not familiar with that? 25 A. No.</p>	<p style="text-align: right;">Page 221</p> <p>1 Q. So Johnson &amp; Johnson doesn't know 2 anything about the Edley case? 3 MR. BERNARDO: Object to the 4 form of the question, beyond the scope of the 5 notice. 6 THE WITNESS: In preparation 7 for today, I did not review that case. 8 BY MR. C. PLACITELLA: 9 Q. Well, Johnson &amp; Johnson certainly 10 knew about the Edley case, correct? 11 MR. BERNARDO: Object. 12 THE WITNESS: I did not review 13 it for today, no. 14 BY MR. C. PLACITELLA: 15 Q. Did you know that the Edley case 16 was filed in the same courthouse as the 17 Gambino case? 18 A. I did not -- 19 MR. BERNARDO: Object to the 20 form of the question. 21 THE WITNESS: -- review that 22 question for -- that case for today. 23 BY MR. C. PLACITELLA: 24 Q. Okay. Did you know it was filed by 25 a well respected lawyer named Ronald Grayzel?</p>

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<p style="text-align: right;">Page 222</p> <p>1 MR. BERNARDO: Object to the</p> <p>2 form of the question.</p> <p>3 THE WITNESS: I did not review</p> <p>4 that case for today.</p> <p>5 BY MR. C. PLACITELLA:</p> <p>6 Q. Do you know what information</p> <p>7 Mr. Grayzel asked for in terms of the</p> <p>8 asbestos content of the talc sold by</p> <p>9 Johnson &amp; Johnson?</p> <p>10 A. I did not review that case, so I'm</p> <p>11 not familiar with it.</p> <p>12 Q. Well, not -- but you're not here as</p> <p>13 you, Nancy Musco. You're here as Johnson &amp;</p> <p>14 Johnson.</p> <p>15 Does Johnson &amp; Johnson know --</p> <p>16 MR. BERNARDO: Object --</p> <p>17 BY MR. C. PLACITELLA:</p> <p>18 Q. -- what happened in the Edley case?</p> <p>19 MR. BERNARDO: Object to the</p> <p>20 form of the question, beyond the scope of the</p> <p>21 notice. She's not here as a corporate</p> <p>22 representative with respect to the Edley</p> <p>23 case.</p> <p>24 MR. C. PLACITELLA: That says</p> <p>25 you.</p>	<p style="text-align: right;">Page 223</p> <p>1 MR. BERNARDO: That's exactly</p> <p>2 right.</p> <p>3 MR. C. PLACITELLA: No, that</p> <p>4 says you. Well, the judge will decide that.</p> <p>5 BY MR. C. PLACITELLA:</p> <p>6 Q. So Johnson &amp; Johnson, as you sit</p> <p>7 here today, knows nothing about the Edley</p> <p>8 case --</p> <p>9 MR. BERNARDO: Object to the --</p> <p>10 BY MR. C. PLACITELLA:</p> <p>11 Q. -- correct?</p> <p>12 MR. BERNARDO: -- form of the</p> <p>13 question.</p> <p>14 THE WITNESS: I did not review</p> <p>15 that case.</p> <p>16 BY MR. C. PLACITELLA:</p> <p>17 Q. You knew, Johnson &amp; Johnson, did</p> <p>18 you not, that the Edley case has been brought</p> <p>19 up in multiple trials related to Johnson's</p> <p>20 Baby Powder; you knew that, right?</p> <p>21 MR. BERNARDO: Object to the</p> <p>22 form of the question.</p> <p>23 THE WITNESS: I did not review</p> <p>24 that case, so I don't know anything about it.</p> <p>25 BY MR. C. PLACITELLA:</p>
<p style="text-align: right;">Page 224</p> <p>1 Q. You know that courts have ruled</p> <p>2 that the Edley case was relevant to the</p> <p>3 Johnson &amp; Johnson Baby Powder cases; you know</p> <p>4 that, right?</p> <p>5 MR. BERNARDO: Object to the</p> <p>6 form.</p> <p>7 BY MR. C. PLACITELLA:</p> <p>8 Q. You, Johnson &amp; Johnson, you know</p> <p>9 that?</p> <p>10 A. I --</p> <p>11 MR. BERNARDO: The witness is</p> <p>12 not speaking on behalf of Johnson &amp; Johnson</p> <p>13 with respect to this question.</p> <p>14 THE WITNESS: I did not review</p> <p>15 this case.</p> <p>16 BY MR. C. PLACITELLA:</p> <p>17 Q. Okay.</p> <p>18 (Exhibit J&amp;J-188, Stipulation</p> <p>19 of Dismissal, is marked for identification.)</p> <p>20 BY MR. C. PLACITELLA:</p> <p>21 Q. I want to give you 188. And I ask</p> <p>22 you to look at the third page, which is the</p> <p>23 Affidavit written by Roger Miller.</p> <p>24 Do you see that?</p> <p>25 A. I see that's what it says, yes.</p>	<p style="text-align: right;">Page 225</p> <p>1 Q. Do you see that was an Affidavit</p> <p>2 executed in the Edley case in Middlesex</p> <p>3 County, New Jersey in 1987; do you see that?</p> <p>4 MR. BERNARDO: Object to the</p> <p>5 form of the question.</p> <p>6 THE WITNESS: I see Middlesex.</p> <p>7 I don't see the date.</p> <p>8 BY MR. C. PLACITELLA:</p> <p>9 Q. And did you know that Johnson &amp;</p> <p>10 Johnson used this Affidavit to get -- to</p> <p>11 obtain a dismissal from Mr. Edley who claimed</p> <p>12 that he was injured from Johnson's talc; did</p> <p>13 you know that?</p> <p>14 MR. BERNARDO: Object to the</p> <p>15 form of the question, beyond the scope of the</p> <p>16 notice.</p> <p>17 THE WITNESS: I did not review</p> <p>18 the Edley case.</p> <p>19 BY MR. C. PLACITELLA:</p> <p>20 Q. Okay. You see Mr. Miller when he</p> <p>21 says he was President of Windsor Minerals;</p> <p>22 that's accurate, correct?</p> <p>23 A. I see that's what it says, yes.</p> <p>24 Q. And he says that in his paragraph 2</p> <p>25 that, The exclusive business of Windsor</p>

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<p style="text-align: right;">Page 226</p> <p>1 Minerals is, and has been the last 18 years, 2 the mining and milling of talc from a single 3 mining district in Windsor, Vermont. That 4 mining district is the exclusive source of 5 talc for all of the Johnson's Baby Powder 6 sold in the United States. 7 Did you know that? 8 MR. BERNARDO: Object to the 9 form of the question. Object to this 10 Affidavit as outside of the scope of the 11 notice. And object to this witness answering 12 in her representative capacity. 13 THE WITNESS: I did not review 14 this. 15 BY MR. C. PLACITELLA: 16 Q. It says, In addition to supplying 17 the talc for Johnson's Baby Powder, Windsor 18 Minerals also sells a portion of its product 19 to independent industrial users. 20 Do you see that? 21 MR. BERNARDO: Same objection. 22 THE WITNESS: That's what's 23 written here. 24 BY MR. C. PLACITELLA: 25 Q. Okay. And what Mr. Miller swears</p>	<p style="text-align: right;">Page 227</p> <p>1 to under oath in paragraph 3 is, All of the 2 talc mined by Windsor Minerals, Inc., whether 3 it is ultimately sold to industrial users or 4 used in Johnson's Baby Powder, is sampled and 5 tested for the presence of asbestos. 6 Do you see that? 7 MR. BERNARDO: Same objection. 8 THE WITNESS: That's what it 9 says. 10 BY MR. C. PLACITELLA: 11 Q. He does not distinguish between 12 industrial and baby powder, does he, in terms 13 of source and testing? 14 MR. BERNARDO: Same objection. 15 THE WITNESS: That's what it 16 says here. 17 BY MR. C. PLACITELLA: 18 Q. And he says, No evidence of the 19 presence of asbestos in Windsor Minerals' 20 product has ever been revealed by this 21 testing; do you see that? 22 MR. BERNARDO: Same objection. 23 THE WITNESS: That's what the 24 sentence says. 25 BY MR. C. PLACITELLA:</p>
<p style="text-align: right;">Page 228</p> <p>1 Q. And then what he does is, to back 2 that statement up he says, See Exhibit A, and 3 he attaches a report from McCrone, correct? 4 MR. BERNARDO: Same objection. 5 THE WITNESS: I see there's a 6 report here, yes. 7 BY MR. C. PLACITELLA: 8 Q. And who is McCrone? 9 A. I believe it's a testing service. 10 Q. All right. And that Affidavit is a 11 lie, isn't it? 12 MR. BERNARDO: Object to the 13 form of the question, beyond the scope of the 14 notice. The witness is not answering in her 15 capacity as a corporate representative with 16 respect to these questions. 17 BY MR. C. PLACITELLA: 18 Q. Ma'am, that Affidavit is a lie; 19 isn't it? 20 A. I have never seen this before and I 21 can't comment on it. 22 Q. Well, you know what the information 23 was, you're here to testify on what the 24 historical discovery responses have been. 25 That Affidavit from the President of Windsor</p>	<p style="text-align: right;">Page 229</p> <p>1 Minerals is a lie, isn't it? 2 MR. BERNARDO: Object to the 3 form of the question, same objection. 4 THE WITNESS: I'm not prepared 5 to answer this. 6 BY MR. C. PLACITELLA: 7 Q. Okay. 8 MR. C. PLACITELLA: Can you 9 give me 28? 10 BY MR. C. PLACITELLA: 11 Q. By the way -- oops, can we go back? 12 You see on the first page, the letter written 13 to the lawyer for Mr. Edley by Johnson &amp; 14 Johnson; do you see that? It says -- 15 A. Do we have that document here? 16 Q. Yeah, it's right, it's right in 17 front of your documents. 18 A. This one. 19 Q. Look at the first page, 188. 20 It says, Enclosed please find an 21 Affidavit on behalf of Windsor Minerals, 22 signed by Roger Miller, President of Windsor 23 Minerals since 1968. Also enclosed you will 24 find an assay from a McCrone Environmental. 25 I trust these documents will now enable you</p>

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<p>1 to sign a dismissal as was done in the Yuhas 2 case. 3 Do you see that? 4 MR. BERNARDO: Object to the 5 form of the question. 6 THE WITNESS: That's what it 7 says. 8 BY MR. C. PLACITELLA: 9 Q. Remember before you said you didn't 10 know anything about Yuhas case. Now we know, 11 right? The Yuhas case was dismissed as well, 12 wasn't it? 13 A. I -- 14 MR. BERNARDO: Object to the 15 form of the question. 16 THE WITNESS: -- don't know 17 anything about the Yuhas case. 18 BY MR. C. PLACITELLA: 19 Q. You don't know that an Affidavit 20 was prepared by Johnson &amp; Johnson in the 21 Yuhas case saying there was no evidence that 22 ever revealed the presence of asbestos and 23 that was responsible for getting that case 24 dismissed; you didn't know that? 25 You, Johnson &amp; Johnson don't know</p>	<p>1 that? 2 MR. BERNARDO: Object to the 3 form of the question. She's not testifying 4 on behalf of Johnson &amp; Johnson with respect 5 to a topic that is wildly outside the scope 6 of the notice. 7 THE WITNESS: I'm not here 8 prepared to talk about the Yuhas case. 9 BY MR. C. PLACITELLA: 10 Q. It says, I trust these documents 11 will now enable you to sign a dismissal as 12 was done in the Yuhas. I've taken the 13 liberty of drafting the dismissal and 14 enclosing same for your signature along with 15 a self-addressed stamped envelope. 16 Do you see that? 17 A. I see that sentence, yes. 18 Q. And the very first page of this 19 document is the Stipulation of Dismissal 20 signed by the lawyer for Mr. Edley after he 21 got the Miller Affidavit, right? 22 MR. BERNARDO: Object to the 23 form of the question, beyond the scope of the 24 notice. The witness is not answering in her 25 corporate representative capacity.</p>
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<p>1 BY MR. C. PLACITELLA: 2 Q. So Mr. Edley gave up his rights to 3 proceed with his lawsuit after he received 4 the Affidavit from the President of Windsor 5 Minerals, right? 6 MR. BERNARDO: Same objection. 7 THE WITNESS: I -- I can't 8 comment on that. 9 BY MR. C. PLACITELLA: 10 Q. The very first page talks about 11 supplemental answers to supplemental 12 interrogatories; do you see that? The letter 13 to Mr. Grayzel. 14 A. Yes. 15 Q. Where are those interrogatories? 16 A. I am not here prepared to talk 17 about this. I don't know. 18 Q. Okay. So can we go to -- do you 19 see this -- this -- this statement here by 20 the President of Windsor Minerals, No 21 evidence of the presence of asbestos in 22 Windsor Mineral product has ever been 23 revealed by this testing. 24 Do you see that? 25 A. I see that sentence.</p>	<p>1 Q. Okay. Now focusing on the word 2 "revealed," got that? 3 A. I see that word, yes. 4 Q. Okay. Now, can you go to this 5 Hopkin -- this chart Hopkins-28, please? 6 Do you see on Hopkins-28 created at 7 the Hopkins dep there's a paragraph that 8 talks about what the test revealed? 9 A. I see that, yes. 10 Q. Okay. And let's just -- because -- 11 because Mr. Miller relied on the McCrone 12 testing for his Affidavit, let's just talk 13 and look at the McCrone tests. Okay? To see 14 if that was the only test. No test ever 15 revealed any evidence. Okay. 16 So let's go to 1971; do you see 17 that? 18 MR. BERNARDO: Object to the 19 form of the question. 20 THE WITNESS: I -- there's -- 21 yeah, there's a couple things under 1971. 22 BY MR. C. PLACITELLA: 23 Q. Right. 24 And do you see where it says the 25 testing entity is McCrone?</p>

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<p>1 A. Yes.</p> <p>2 Q. And do you see where it says that</p> <p>3 the product that was tested was Shower to</p> <p>4 Shower?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And do you see where it</p> <p>7 says, Fiber of chrysotile, was very clear.</p> <p>8 Medicated powder we found one fiber of</p> <p>9 chrysotile, Shower to Shower. We feel</p> <p>10 strongly it may be chrysotile. Chrysotile is</p> <p>11 very low. Final report, Shower to Shower,</p> <p>12 the fiber content of Shower to Shower is</p> <p>13 quite low in comparison to previous samples</p> <p>14 investigated. We found three suspect fibers.</p> <p>15 Of these two were found one field and</p> <p>16 probably have the same source, very possibly</p> <p>17 contamination. It is still questionable</p> <p>18 whether they are chrysotile. We have,</p> <p>19 however, found traces of chrysotile in G-11,</p> <p>20 one of the additives to Shower to Shower, and</p> <p>21 this might be a possible source of the</p> <p>22 contaminant fibers.</p> <p>23 Do you see that?</p> <p>24 MR. BERNARDO: Object to the</p> <p>25 form of the question. Object to the use of</p>	<p>1 this document and this summary of the</p> <p>2 document. It's not in front of the witness,</p> <p>3 that's been created by Plaintiff's counsel.</p> <p>4 This is well beyond the scope of the notice.</p> <p>5 MR. C. PLACITELLA: That's</p> <p>6 absolutely a false statement. And I'm --</p> <p>7 I'm -- and please don't do that, please don't</p> <p>8 do that. You are violating the court rules</p> <p>9 and please don't do that.</p> <p>10 MR. BERNARDO: You are</p> <p>11 violating the court rules by asking the</p> <p>12 witness questions that are so wildly beyond</p> <p>13 the scope of what this deposition is.</p> <p>14 MR. C. PLACITELLA: Okay.</p> <p>15 Well, you know what, we'll let Judge Viscomi</p> <p>16 make that decision. Okay?</p> <p>17 MR. BERNARDO: You've said that</p> <p>18 several times. I'm happy to do that.</p> <p>19 MR. C. PLACITELLA: So...</p> <p>20 MR. BERNARDO: I'm just</p> <p>21 preserving a record for my client.</p> <p>22 BY MR. C. PLACITELLA:</p> <p>23 Q. And you see over here where it says</p> <p>24 Hopkins Comments?</p> <p>25 A. I see those words.</p>
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<p>1 Q. And you see he has no comments,</p> <p>2 correct?</p> <p>3 MR. BERNARDO: Object to the</p> <p>4 form of the question, same objection.</p> <p>5 BY MR. C. PLACITELLA:</p> <p>6 Q. And you see where here it says,</p> <p>7 Satisfies Johnson &amp; Johnson's definition of</p> <p>8 asbestos and the answer is yes; do you see</p> <p>9 that?</p> <p>10 MR. BERNARDO: Object to the</p> <p>11 form of the question.</p> <p>12 THE WITNESS: I can't comment</p> <p>13 on these. I don't know what this means.</p> <p>14 It's all taken out of context. I'm -- I</p> <p>15 don't know what any of this means.</p> <p>16 BY MR. C. PLACITELLA:</p> <p>17 Q. Ma'am, this particular study was</p> <p>18 never referenced or alluded to in the Miller</p> <p>19 Affidavit that said, No, the evidence -- the</p> <p>20 presence of asbestos was never revealed by</p> <p>21 any test, right?</p> <p>22 This was not part of that?</p> <p>23 MR. BERNARDO: Object to the</p> <p>24 form of the question, same objection.</p> <p>25 BY MR. C. PLACITELLA:</p>	<p>1 Q. Correct?</p> <p>2 A. Again, I can't comment on this.</p> <p>3 Q. Okay. Let's go down to 10/12/1971.</p> <p>4 Again, testing entity was McCrone, correct?</p> <p>5 A. That's what it says, yes.</p> <p>6 Q. And it went to Goudie. Who's</p> <p>7 Goudie?</p> <p>8 A. I don't know.</p> <p>9 Q. Okay. And, again, this was tested</p> <p>10 Shower to Shower, correct?</p> <p>11 MR. BERNARDO: Same objection</p> <p>12 to this whole line of questioning.</p> <p>13 THE WITNESS: You're reading</p> <p>14 what's here, yes.</p> <p>15 BY MR. C. PLACITELLA:</p> <p>16 Q. Right.</p> <p>17 And what the chart says the test</p> <p>18 revealed was traces of chrysotile in one of</p> <p>19 the additives, correct?</p> <p>20 A. Those are the words that are here.</p> <p>21 Q. And under the top -- under the --</p> <p>22 under the column whether that satisfies the</p> <p>23 definition of asbestos of Johnson &amp; Johnson,</p> <p>24 the answer is yes, correct?</p> <p>25 MR. BERNARDO: Object to the</p>

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<p style="text-align: right;">Page 238</p> <p>1 form of the question. 2 THE WITNESS: The word "yes" is 3 written here, but I cannot interpret on what 4 any of this means. 5 BY MR. C. PLACITELLA: 6 Q. All right. And this is nowhere 7 referenced in the dep -- in the Affidavit of 8 Mr. Miller, is it? 9 A. I can't comment on this chart. 10 Q. Ma'am, these -- this test that's 11 set forth in this chart is nowhere referenced 12 in the Affidavit of Mr. Miller concerning 13 what was found in Johnson's Baby Powder, 14 correct? 15 MR. BERNARDO: Object to the 16 form of the question. 17 THE WITNESS: I don't see this 18 mentioned there, no. 19 BY MR. C. PLACITELLA: 20 Q. And, ma'am, you know that that 21 binder that's in front of you has all of 22 these tests in there, correct? 23 A. I don't know -- I cannot tell you 24 everything that's in that binder. 25 Q. Well, I'm going to represent to</p>	<p style="text-align: right;">Page 239</p> <p>1 you, like I did the last time, that all of 2 those tests are set forth in that binder. 3 Did you look through that binder before you 4 came here today? 5 A. I knew that the binder existed, I 6 knew that it involves tests, but I did not 7 look at every single one of them, no. 8 Q. Before you came here and testified 9 under oath that there is no evidence 10 whatsoever of asbestos in baby powder, you 11 never went back and looked at the binder that 12 was shown to you last time under oath? 13 A. Actually, I did better and had the 14 conversation with Dr. Hopkins, because I 15 could look at this all the time and it 16 wouldn't mean anything to me. So I wanted to 17 make sure that he was familiar with all the 18 things that you're referencing. 19 Q. Well, the last time you were with 20 me, you were told that that chart was created 21 at the deposition of Dr. Hopkins, right? 22 A. I don't remember this chart. 23 Q. You don't remember that chart? 24 A. You're saying you showed it to me, 25 I don't remember. And I don't --</p>
<p style="text-align: right;">Page 240</p> <p>1 Q. Do I need to play the video that 2 shows you that you knew about it? 3 A. If you say you did. I said I don't 4 remember. 5 Q. All right. And you never discussed 6 this chart or any of its contents with 7 Dr. Hopkins in preparation for today's 8 deposition, correct? 9 MR. BERNARDO: Object to the 10 form of the question. 11 BY MR. C. PLACITELLA: 12 Q. Correct? 13 MR. BERNARDO: Characterization 14 of what this witness says she's done. 15 THE WITNESS: No. As I said, I 16 did not discuss this specific chart, no. 17 BY MR. C. PLACITELLA: 18 Q. Okay. Let's go down to 11/11/1971. 19 Another McCrone test using TEM for Shower to 20 Shower. The results of that test are 21 mentioned nowhere in the Miller Affidavit, 22 correct? 23 A. I did not -- 24 MR. BERNARDO: Object to the 25 form of the question.</p>	<p style="text-align: right;">Page 241</p> <p>1 THE WITNESS: -- see the... 2 BY MR. C. PLACITELLA: 3 Q. In fact, none of these tests that 4 we've simply looked at on the first page of 5 this document were ever referenced by you or 6 Johnson &amp; Johnson in any answer to 7 interrogatory ever, correct? 8 MR. BERNARDO: Object, object 9 to the form of the question. 10 BY MR. C. PLACITELLA: 11 Q. Correct? 12 A. If they were pertinent to the 13 question asked in the interrogatory, they 14 would have been mentioned. But since they 15 were not, I imagine they were not pertinent 16 to -- 17 Q. So when you were asked questions 18 under oath in interrogatories whether there 19 was any evidence of asbestos, you didn't 20 think that any of the documents that are set 21 forth in this chart have any relevance 22 whatsoever? 23 MR. BERNARDO: Object to the 24 form of the question. 25 THE WITNESS: I know that the</p>

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<p>Page 242</p> <p>1 experts who provided those answers don't 2 depend on just documents standing alone, that 3 they use their experience and their 4 expertise, along with any science that's 5 available. 6 BY MR. C. PLACITELLA: 7 Q. Yes, ma'am. 8 And nowhere did you ever turn over 9 before 19 -- before 2017 any of these tests, 10 you, Johnson &amp; Johnson, correct? 11 MR. BERNARDO: Object to the 12 form of the question, outside of the scope of 13 the notice. 14 If you know in your individual 15 capacity, you can answer. 16 THE WITNESS: No, I don't know. 17 BY MR. C. PLACITELLA: 18 Q. Okay, that's 1971. 19 Let's go to 1972, another test by 20 McCrone. Do you see where they use TEM 21 looking for the asbestos, presence of 22 asbestos in Johnson's Baby Powder; do you see 23 that? 24 A. I see that's written, yes. 25 Q. And what they found was both</p>	<p>Page 243</p> <p>1 samples contained an insignificant amount of 2 tremolite, tremolite rods; do you see that? 3 A. That's what it says. 4 Q. And under the chart where does it 5 satisfy the definition of asbestos under 6 Johnson &amp; Johnson, the answer is yes, 7 correct? 8 MR. BERNARDO: Object to the 9 form of the question, same objection as 10 prior. 11 THE WITNESS: I see the word 12 "yes." 13 BY MR. C. PLACITELLA: 14 Q. Right. 15 But even though there -- as 16 according to Dr. Hopkins's chart, a test from 17 1972 showing what Johnson &amp; Johnson deems 18 satisfying its definition of asbestos in baby 19 powder, you never referenced that in your 20 answer to interrogatories in Krushinski, 21 correct? 22 A. These -- these were not written 23 specifically in answer to any of those 24 answers. 25 Q. Okay. You never referenced this,</p>
<p>Page 244</p> <p>1 correct? 2 A. Again, I don't know what this is. 3 You keep referring to it as Dr. Hopkins' 4 chart. Yes, you may have showed it to me, I 5 don't remember. But I don't know what each 6 column means. The entire testing is not 7 here. So I -- I can't -- I can't comment 8 here. 9 Q. Yes, ma'am. 10 What I asked you was when you 11 answered the interrogatories in the 12 Krushinski case under oath, you never 13 referenced a 10/27/72 test from McCrone 14 finding samples of tremolite rods that 15 Johnson &amp; Johnson admits satisfies its 16 definition of asbestos, correct? 17 MR. BERNARDO: Object to the 18 form of the question. 19 THE WITNESS: I did not provide 20 the answers. 21 BY MR. C. PLACITELLA: 22 Q. Right. 23 A. As I explained, I had the experts, 24 the internal experts provide the answers and 25 they would have used whatever science was</p>	<p>Page 245</p> <p>1 credible and available. 2 Q. Okay. And this test was never 3 referenced in -- in -- in Mr. Miller's 4 Affidavit, correct, this McCrone test, when 5 he said no presence ever revealed -- 6 MR. BERNARDO: Object to the 7 form -- 8 BY MR. C. PLACITELLA: 9 Q. -- correct? 10 MR. BERNARDO: -- of the 11 question. 12 BY MR. C. PLACITELLA: 13 Q. Wasn't, wasn't referenced, right? 14 A. It's not referenced, no. 15 Q. Okay. Let's go to the next McCrone 16 test. 17 Here's one from 1974. And that was 18 done, it says McCrone, Lee. This was done at 19 the Hammondsville ore; do you see that? 20 A. I see that, where it says, yes. 21 Q. And it says, Chrysotile fibers 22 suppression was indicated. Dartmouth finds 23 amphibole 100 to 200 parts per million in the 24 ore and 9,000 in the ore. McCrone finds 25 chrysotile in ore and finished product.</p>

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<p>1 Do you see that?</p> <p>2 MR. BERNARDO: Object to the</p> <p>3 form of the question, beyond the scope of the</p> <p>4 notice. The witness is not responding in her</p> <p>5 corporate representative capacity --</p> <p>6 BY MR. C. PLACITELLA:</p> <p>7 Q. Do you see that?</p> <p>8 MR. BERNARDO: -- to these</p> <p>9 questions.</p> <p>10 THE WITNESS: All I could tell</p> <p>11 you is that's what it says.</p> <p>12 BY MR. C. PLACITELLA:</p> <p>13 Q. And under the column does it</p> <p>14 satisfy Johnson &amp; Johnson's definition of</p> <p>15 asbestos, the answer is yes --</p> <p>16 MR. BERNARDO: Same objection.</p> <p>17 BY MR. C. PLACITELLA:</p> <p>18 Q. -- correct?</p> <p>19 A. I see the word "yes."</p> <p>20 Q. Okay. Not referenced anywhere in</p> <p>21 Mr. Miller's Affidavit, correct?</p> <p>22 MR. BERNARDO: Same objection.</p> <p>23 THE WITNESS: I see that it's</p> <p>24 not.</p> <p>25 BY MR. C. PLACITELLA:</p>	<p>1 Q. Let's go to the next McCrone test,</p> <p>2 4/24/74.</p> <p>3 By the way, did Dr. Hopkins tell</p> <p>4 you about any of this when you had this</p> <p>5 conversation with him?</p> <p>6 A. We didn't discuss his chart, as you</p> <p>7 refer to it.</p> <p>8 Q. Well, did he tell you about any of</p> <p>9 these tests that found asbestos by McCrone?</p> <p>10 A. He did not talk about any kind of</p> <p>11 tests that found asbestos.</p> <p>12 Q. Okay. And here it talks about a</p> <p>13 test done of the Argonaut mine. And it says</p> <p>14 again, TEM finds chrysotile and fibrous</p> <p>15 tremolite; do you see that?</p> <p>16 A. That's what it says.</p> <p>17 Q. And that satisfies Johnson &amp;</p> <p>18 Johnson's definition of asbestos, right?</p> <p>19 A. The word "yes" is written there.</p> <p>20 Q. Okay. And then there's another</p> <p>21 test by McCrone in 1974, correct?</p> <p>22 A. Yes.</p> <p>23 MR. BERNARDO: Objection.</p> <p>24 BY MR. C. PLACITELLA:</p> <p>25 Q. And another one under that in 1974,</p>
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<p>1 correct?</p> <p>2 MR. BERNARDO: Just a running</p> <p>3 objection to this entire chart, so I don't</p> <p>4 keep interrupting, on the basis that I</p> <p>5 explained before.</p> <p>6 THE WITNESS: That's what's</p> <p>7 written here.</p> <p>8 BY MR. C. PLACITELLA:</p> <p>9 Q. Okay. And then another test in</p> <p>10 October 1974, correct?</p> <p>11 A. I see that, yes.</p> <p>12 Q. And another one by McCrone in --</p> <p>13 and -- strike that.</p> <p>14 And all the tests done by McCrone</p> <p>15 in 1974 when you go to the column, does the</p> <p>16 test satisfy the definition of asbestos, it</p> <p>17 all is yes, right?</p> <p>18 A. The word "yes" is written there,</p> <p>19 but I don't know what that means. I don't</p> <p>20 know what these testing mean, testing means.</p> <p>21 Dr. Hopkins could describe this in much</p> <p>22 better words than I could. I don't know what</p> <p>23 any of this means.</p> <p>24 Q. Yes, ma'am. But we're here to</p> <p>25 determine the veracity of the discovery</p>	<p>1 responses that were provided historically by</p> <p>2 Johnson &amp; Johnson. Discovery responses that</p> <p>3 you certified and others certified, you</p> <p>4 understand that, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And no interrogatory ever certified</p> <p>7 as true and accurate under oath by Johnson &amp;</p> <p>8 Johnson that you're aware of ever mentioned</p> <p>9 any of these tests by McCrone, correct?</p> <p>10 MR. BERNARDO: Object to the</p> <p>11 form of the question.</p> <p>12 THE WITNESS: As I said</p> <p>13 earlier, there was no specific questions that</p> <p>14 asked about any kind of testing. The answers</p> <p>15 were based on the internal experts'</p> <p>16 experience, expertise and the accurate</p> <p>17 science.</p> <p>18 MR. C. PLACITELLA: Can you</p> <p>19 read my question back, please, and see if I</p> <p>20 can get an answer to it?</p> <p>21 (At which time the following</p> <p>22 question is read:</p> <p>23 "QUESTION: And no</p> <p>24 interrogatory ever certified as true and</p> <p>25 accurate under oath by Johnson &amp; Johnson that</p>

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<p style="text-align: right;">Page 250</p> <p>1 you're aware of ever mentioned any of these 2 tests by McCrone, correct?") 3 THE WITNESS: That's correct. 4 They did not answer these -- they did not 5 cite these specifically, no. 6 BY MR. C. PLACITELLA: 7 Q. Okay. And then in 1975, according 8 to this, there's another test by McCrone, 9 correct? 10 And it says, Confirmed asbestos, 11 low to medium, bundles of amphiboles and that 12 satisfied Johnson &amp; Johnson's definition of 13 asbestos, right? 14 MR. BERNARDO: Object to the 15 form of the question. 16 THE WITNESS: Again, the word 17 "yes" is written there. I don't know what 18 any of this means. 19 BY MR. C. PLACITELLA: 20 Q. Okay. And, again, in 1975 another 21 test by McCrone, fibers of asbestos, answer 22 yes, correct? 23 A. Those are the words written. 24 Q. Okay. Now we're up to 1975, that's 25 ten years -- 12 years before Miller executed</p>	<p style="text-align: right;">Page 251</p> <p>1 his Affidavit. And on McCrone tests alone, I 2 have one, two, three, four, five, six, seven, 3 eight, nine, ten, 11, 12, 13 tests that were 4 never mentioned by McCrone, that were never 5 mentioned in the Miller Affidavit, correct? 6 MR. BERNARDO: Object to the 7 form of the question, same objection with 8 respect to scope as I've made numerous times. 9 (Reporter clarification.) 10 MR. BERNARDO: That I've made 11 numerous times. 12 THE WITNESS: I -- I cannot 13 comment on the Affidavit. I'm not here to 14 talk about that, that particular Affidavit, 15 nor this chart. 16 BY MR. C. PLACITELLA: 17 Q. And, ma'am, I'm not going to 18 belabor the point here, but in 1983 there was 19 another McCrone test, correct? 20 MR. BERNARDO: Same objection. 21 THE WITNESS: That's what it 22 says. 23 BY MR. C. PLACITELLA: 24 Q. And then another McCrone test in 25 '84, correct?</p>
<p style="text-align: right;">Page 252</p> <p>1 MR. BERNARDO: Same objection. 2 THE WITNESS: That's what it 3 says. 4 BY MR. C. PLACITELLA: 5 Q. And another McCrone test in 1986? 6 MR. BERNARDO: Same objection. 7 BY MR. C. PLACITELLA: 8 Q. Correct? 9 MR. BERNARD: Same objection, 10 same objection. 11 THE WITNESS: That's what it 12 says. 13 BY MR. C. PLACITELLA: 14 Q. Correct? 15 A. That's what it says. 16 Q. All right. And what Miller did, he 17 cited a single test by McCrone for the 18 evidence that asbestos was never found in any 19 Johnson &amp; Johnson product and omitted every 20 other McCrone test on this chart, correct? 21 MR. BERNARDO: Object to the 22 form of the question. 23 THE WITNESS: I cannot comment 24 on the Miller Affidavit, nor this chart. 25 BY MR. C. PLACITELLA:</p>	<p style="text-align: right;">Page 253</p> <p>1 Q. And, actually, when you looked at 2 the 1983 and '84 tests, right, Miller himself 3 received the tests that satisfied Johnson &amp; 4 Johnson's definition of asbestos, according 5 to this chart, correct? 6 MR. BERNARDO: Object to the 7 form of the question. 8 THE WITNESS: I can't interpret 9 this, this chart. And I'm not here to talk 10 about it. 11 BY MR. C. PLACITELLA: 12 Q. Okay. So I ask you again, Miss 13 Musco, is Mr. Miller's Affidavit a lie? 14 MR. BERNARDO: Object to the 15 form of the question. 16 BY MR. C. PLACITELLA: 17 Q. Based on what you've seen here 18 today. 19 A. I'm not here today to talk about 20 Mr. Miller's Affidavit. I can't comment. 21 Q. Ma'am, you are here as designated 22 as Johnson &amp; Johnson's representative on the 23 veracity of discovery responses provided 24 historically in talc litigation. You 25 understand that, correct?</p>

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<p style="text-align: right;">Page 254</p> <p>1 A. I believe that there's a 2 misunderstanding about the scope of our -- 3 our notice, yes. 4 Q. Ma'am, I asked you those questions 5 when we started. Can we agree that every 6 test up until Miller signed his Affidavit in 7 1987 was never referenced, every test in this 8 chart, not one was referenced in Miller's 9 Affidavit when he certified under oath to get 10 Mr. Edley's case dismissed, not one of these 11 tests was ever referenced, correct? 12 MR. BERNARDO: Objection to the 13 form of the question, beyond the scope. This 14 witness is not here as a corporate 15 representative with respect to that 16 Affidavit. 17 THE WITNESS: I -- I cannot 18 comment on the Affidavit. 19 BY MR. C. PLACITELLA: 20 Q. You think that's okay to do that? 21 MR. BERNARDO: Same objection. 22 BY MR. C. PLACITELLA: 23 Q. To swear under oath to get some -- 24 get somebody to give up their rights and only 25 provide half the truth?</p>	<p style="text-align: right;">Page 255</p> <p>1 Do you think Johnson is -- does 2 Johnson &amp; Johnson think that's okay? 3 MR. BERNARDO: Object to the 4 form of the question, same objection with 5 respect to scope. 6 THE WITNESS: I -- I can't 7 answer that kind of question. 8 BY MR. C. PLACITELLA: 9 Q. I'm asking does Johnson &amp; Johnson 10 believe it was okay to file an Affidavit in 11 this very state, in Middlesex County and get 12 somebody to give up their rights, saying 13 there's no evidence whatsoever, when they had 14 evidence from the same company over and over 15 for more than a decade; do you think that was 16 right on behalf of Johnson &amp; Johnson? 17 MR. BERNARDO: Object to the 18 form, same objection with respect to the 19 scope. 20 THE WITNESS: I can't comment 21 on the Affidavit. 22 BY MR. C. PLACITELLA: 23 Q. So Johnson &amp; Johnson cannot comment 24 on whether it was proper to use an Affidavit 25 saying there was no evidence whatsoever to</p>
<p style="text-align: right;">Page 256</p> <p>1 get somebody's case dismissed, when it 2 clearly had evidence to the contrary in its 3 possession; is that what you're saying? 4 MR. BERNARDO: You've -- 5 answered -- asked the question several times. 6 She's answered it. We've objected based upon 7 the scope. You're -- 8 MR. C. PLACITELLA: Please 9 don't do this. 10 MR. BERNARDO: Don't tell me 11 "please don't do this." 12 MR. C. PLACITELLA: Please. 13 MR. BERNARDO: You're beginning 14 to become harassing, Mr. Placitella. 15 MR. C. PLACITELLA: Okay. 16 Well, can you pull out -- do you have his 17 Affidavit? 18 BY MR. C. PLACITELLA: 19 Q. Ma'am, can you answer my question? 20 A. Would you please repeat the 21 question? 22 MR. C. PLACITELLA: Could you 23 repeat the question, please? 24 (At which time the following 25 question is read:</p>	<p style="text-align: right;">Page 257</p> <p>1 "QUESTION: So Johnson &amp; 2 Johnson cannot comment on whether it was 3 proper to use an Affidavit saying there was 4 no evidence whatsoever to get somebody's case 5 dismissed, when it clearly had evidence to 6 the contrary in its..." 7 BY MR. C. PLACITELLA: 8 Q. Can you answer that? 9 A. I -- I -- it didn't sound like it 10 was completed. 11 THE COURT REPORTER: I need a 12 minute. 13 MR. C. PLACITELLA: Take your 14 time. You know what, let me just keep moving 15 I'll make you... 16 (Off-the-record discussion.) 17 BY MR. C. PLACITELLA: 18 Q. Did you know that the reason that 19 Mr. Hopkins never told you about the Miller 20 Affidavit or the tests that were missing was 21 because he filed the same Affidavit in other 22 cases? 23 MR. BERNARDO: Object to the 24 form. 25 BY MR. C. PLACITELLA:</p>

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<p>1 Q. Did you know he filed the same 2 Affidavit in other cases? 3 MR. BERNARDO: Object to the 4 form of the question. 5 THE WITNESS: I can't answer 6 that, because I'm not familiar with the 7 Affidavit, because I'm not here to talk about 8 that. It was my understanding that this was 9 not within the scope of the notice. 10 BY MR. C. PLACITELLA: 11 Q. Ma'am, given the evidence that's on 12 Hopkins-28, would you sign that Affidavit? 13 MR. BERNARDO: Object to the 14 form of the question, same as before. 15 THE WITNESS: Are you referring 16 to the original -- 17 BY MR. C. PLACITELLA: 18 Q. The Affidavit signed by Miller in 19 the Edley case, would you sign that Affidavit 20 in order to get Mr. Edley to dismiss his 21 case, would you sign it? 22 MR. BERNARDO: Objection. 23 BY MR. C. PLACITELLA: 24 Q. Given everything that we've gone 25 through?</p>	<p>1 MR. BERNARDO: Object to the 2 form of the question. 3 THE WITNESS: I can't even 4 answer that, that wouldn't be my role. I 5 don't have complete information. I don't 6 know enough about it. 7 BY MR. C. PLACITELLA: 8 Q. Ma'am, could you just move that 9 book in -- in front of the camera so the 10 camera can pick it up, please? 11 A. Are you referring to the -- 12 Q. Yes, ma'am. 13 That's the book of testing 14 documents that go along with this chart; you 15 know that, right? 16 MR. BERNARDO: Object to the 17 form of the question. 18 THE WITNESS: That's what you 19 have said, yes. 20 BY MR. C. PLACITELLA: 21 Q. And have you gone back and verified 22 that when you swore to answers to 23 interrogatories under oath that you never 24 referenced a single one of the tests in that 25 book?</p>
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<p>1 MR. BERNARDO: Object to the 2 form of the question. 3 THE WITNESS: I told you 4 earlier, I could go back and read every one 5 of them, but it wouldn't make that much sense 6 to me, because this is not my expertise, 7 which is why I had the conversation with 8 Dr. Hopkins to ensure that he has read them. 9 He's the expert. And that he understands 10 them. 11 BY MR. C. PLACITELLA: 12 Q. Ma'am, that wasn't my question. 13 My question was, am I correct that 14 when you swore to interrogatories under oath 15 on behalf of Johnson &amp; Johnson and others 16 swore to interrogatories under oath of 17 Johnson &amp; Johnson, none of the tests in that 18 book were ever supplied or referenced in any 19 way, correct? 20 MR. BERNARDO: Object to the 21 form of the question. 22 THE WITNESS: It -- it was not 23 appropriate to do that, because, again, we 24 had the experts answering the questions based 25 on their information and their knowledge.</p>	<p>1 There's no specific set of studies that goes 2 with each answer. 3 BY MR. C. PLACITELLA: 4 Q. All right. Let me ask the question 5 again, please. 6 When you answered interrogatories 7 under oath and others did the same thing on 8 behalf of Johnson &amp; Johnson, you can't point 9 to a single instance where any of the results 10 that are in that book were ever supplied or 11 referenced by Johnson &amp; Johnson, correct? 12 A. Well, I can't speak for others who 13 have provided answers, but I can speak for 14 what I did. And, again, I did not go back 15 and look at each one of these. Again, I 16 trusted the people that I asked to respond to 17 the questions. 18 Q. Ma'am, we'd like to finish -- 19 MR. BERNARDO: Listen to his 20 question. 21 BY MR. C. PLACITELLA: 22 Q. -- at some point in time, okay? 23 MR. BERNARDO: It's getting 24 late, but just listen to his question. 25 BY MR. C. PLACITELLA:</p>

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<p style="text-align: right;">Page 262</p> <p>1 Q. Ma'am, please.</p> <p>2 When you answered interrogatories</p> <p>3 under oath, you never supplied or referenced</p> <p>4 any of the studies that are set forth in that</p> <p>5 book in front of you, true?</p> <p>6 A. No, I did not.</p> <p>7 Q. And as you sit here today, you</p> <p>8 don't have any evidence that anybody else at</p> <p>9 Johnson &amp; Johnson when they were certifying</p> <p>10 answers to interrogatories referenced or</p> <p>11 supplied any of the testing documents in that</p> <p>12 book in front of you, correct?</p> <p>13 A. Not in direct response, no.</p> <p>14 MR. C. PLACITELLA: Now, can</p> <p>15 you give me 282?</p> <p>16 (Exhibit J&amp;J-282, is marked for</p> <p>17 identification.)</p> <p>18 BY MR. C. PLACITELLA:</p> <p>19 Q. Do you know how many times</p> <p>20 Johnson &amp; Johnson filed affidavits in courts</p> <p>21 of law indicating that there was no evidence</p> <p>22 whatsoever in order to get people's cases</p> <p>23 dismissed?</p> <p>24 MR. BERNARDO: Object to the</p> <p>25 form of the question.</p>	<p style="text-align: right;">Page 263</p> <p>1 THE WITNESS: No, I do not.</p> <p>2 BY MR. C. PLACITELLA:</p> <p>3 Q. You have in front of you another</p> <p>4 Affidavit signed by Roger Miller a year after</p> <p>5 the Edley Affidavit in the Andonian case,</p> <p>6 correct?</p> <p>7 MR. BERNARDO: Object to the</p> <p>8 form of the question.</p> <p>9 THE WITNESS: I see those</p> <p>10 names, yes.</p> <p>11 BY MR. C. PLACITELLA:</p> <p>12 Q. Right. And, again, Roger Miller</p> <p>13 states under oath, All of the talc mined by</p> <p>14 Windsor Minerals, Inc. has been regularly</p> <p>15 sampled or tested for the presence of</p> <p>16 asbestos. No evidence of the presence of</p> <p>17 asbestos in Windsor Minerals' product has</p> <p>18 ever been revealed by this testing.</p> <p>19 Correct?</p> <p>20 A. That's what it says.</p> <p>21 Q. And if I go to --</p> <p>22 MR. C. PLACITELLA: Where is</p> <p>23 the chart?</p> <p>24 BY MR. C. PLACITELLA:</p> <p>25 Q. By 1988 according to the Hopkins</p>
<p style="text-align: right;">Page 264</p> <p>1 chart, there were one, two, three, four,</p> <p>2 five, six, seven, eight, nine, ten, 11, 12,</p> <p>3 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23,</p> <p>4 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34,</p> <p>5 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45;</p> <p>6 do you see that? Forty-five entries on</p> <p>7 Dr. Hopkins' chart talking about testing</p> <p>8 evidence on asbestos, correct?</p> <p>9 MR. BERNARDO: Object to the</p> <p>10 form of the question, beyond the scope of the</p> <p>11 notice.</p> <p>12 You can answer in your</p> <p>13 individual capacity, if you can.</p> <p>14 THE WITNESS: I heard you count</p> <p>15 them up to those numbers, but...</p> <p>16 BY MR. C. PLACITELLA:</p> <p>17 Q. Well, do you want to count it again</p> <p>18 and see if I got it right?</p> <p>19 A. It's not necessary for me. I</p> <p>20 cannot comment on this chart.</p> <p>21 Q. And not one of the tests set forth</p> <p>22 in that chart or in that book are referenced</p> <p>23 anywhere on the Andonian Affidavit filed by</p> <p>24 Roger Miller in order to get cases dismissed,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 265</p> <p>1 MR. BERNARDO: Object to the</p> <p>2 form of the question. Object, beyond the</p> <p>3 scope of the notice.</p> <p>4 You can answer in your</p> <p>5 individual capacity, if you can.</p> <p>6 THE WITNESS: I can't comment</p> <p>7 on it.</p> <p>8 BY MR. C. PLACITELLA:</p> <p>9 Q. None of the tests referenced on the</p> <p>10 chart up until the time he signed this</p> <p>11 Affidavit in 1988 are referenced anywhere in</p> <p>12 his Affidavit, correct?</p> <p>13 MR. BERNARDO: Same objection.</p> <p>14 THE WITNESS: I'm not prepared</p> <p>15 to comment on the Affidavit or any of the</p> <p>16 testing on the chart.</p> <p>17 BY MR. C. PLACITELLA:</p> <p>18 Q. Ma'am, all I'm asking you is any of</p> <p>19 the testing listed on the chart, any of them</p> <p>20 reflected anywhere in his Affidavit?</p> <p>21 MR. BERNARDO: Same objection.</p> <p>22 THE WITNESS: I do not see them</p> <p>23 listed here, no.</p> <p>24 BY MR. C. PLACITELLA:</p> <p>25 Q. Okay.</p>

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<p>1 MR. C. PLACITELLA: Now, can 2 you give me 195, please? 3 (Exhibit J&amp;J-195, Affidavit, is 4 marked for identification.) 5 BY MR. C. PLACITELLA: 6 Q. 195. 7 MR. BERNARDO: Same objection 8 with respect to the use of the document. 9 BY MR. C. PLACITELLA: 10 Q. Is an Affidavit -- 11 MR. BERNARDO: I won't repeat 12 it, same objection with respect to the use of 13 this document. 14 BY MR. C. PLACITELLA: 15 Q. -- signed by William Ashton in 16 Somerset County, New Jersey, do you see that? 17 A. I see it's an Affidavit. And I see 18 Mr. Ashton's name. 19 Q. And Mr. Ashton is one of the 20 scientists who was knowledgeable and who 21 worked on the talc litigation, correct? 22 A. He was assigned to Johnson &amp; 23 Johnson, yes. 24 Q. In fact, he was involved in the 25 defense of the Westfall case, correct?</p>	<p>1 A. I don't know for sure. 2 Q. And he was known -- 3 MR. C. PLACITELLA: Okay. Let 4 me -- can we go to the Elmo, please? Sorry. 5 BY MR. C. PLACITELLA: 6 Q. This is in the privilege log chart. 7 Do you see here talks about the Westfall 8 case? 9 MR. BERNARDO: I'll renew my 10 objection with respect -- 11 BY MR. C. PLACITELLA: 12 Q. Do you see that? 13 MR. BERNARDO: With respect -- 14 THE WITNESS: I see -- 15 MR. BERNARDO: -- to the use of 16 the privilege log. 17 BY MR. C. PLACITELLA: 18 Q. Okay. 19 A. I see what you've highlighted. 20 Q. All right. And do you see if you 21 go across that William Ashton was involved in 22 the case; do you see that? 23 A. I see his name that you're 24 highlighting. 25 Q. And he corresponded with the</p>
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<p>1 lawyers in the Westfall case, correct? 2 A. I see you're highlighting names. I 3 don't know what this all means. 4 Q. And also involved according to this 5 log was the Medical Director for Johnson &amp; 6 Johnson, he was involved in the Westfall case 7 according to this log, correct? 8 A. I see you have highlighted those 9 names. 10 Q. Okay. So William Ashton clearly 11 knew what was going on in the Westfall case, 12 as did the Medical Director for Johnson &amp; 13 Johnson, correct? 14 MR. BERNARDO: Object to the 15 form of the question. 16 THE WITNESS: I can't comment. 17 This was the first time I saw this. I don't 18 know what it is and I was not here today to 19 talk about this. 20 BY MR. C. PLACITELLA: 21 Q. Okay. Well, let's look at -- 22 MR. C. PLACITELLA: Can we go 23 back to the iPad, please? 24 BY MR. C. PLACITELLA: 25 Q. Ashton states in the beginning of</p>	<p>1 his Affidavit that he has been involved in 2 the talc business for Johnson &amp; Johnson for 3 35 years, correct? 4 A. That's what it says. 5 Q. Okay. And he's been to the talc 6 deposits and knows all about them, correct? 7 A. It says he was actively involved. 8 Q. Okay. And then can you go to the 9 next page of his Affidavit? He says, From 10 the 1940s to the 1980s, talc mined in Vermont 11 and specifically, the talc mined by Engelhard 12 (and its predecessors) from the talc mine 13 located in Johnson, Vermont has been 14 considered to be talc free from contamination 15 of asbestos. 16 Do you see that? 17 MR. BERNARDO: Object to the 18 form of the question, same objection -- 19 BY MR. C. PLACITELLA: 20 Q. Do you see that? 21 MR. BERNARDO: -- with respect 22 to this Affidavit and the scope of this 23 notice. 24 BY MR. C. PLACITELLA: 25 Q. Do you see that?</p>

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<p style="text-align: right;">Page 270</p> <p>1 A. I see that's what those sentences 2 say. 3 Q. That's a lie, right? 4 MR. BERNARDO: Object to the 5 form of the question. 6 THE WITNESS: I cannot comment 7 on this. I was not here today prepared to 8 talk about this. It's... 9 BY MR. C. PLACITELLA: 10 Q. Well, you were here again today, 11 designated as to the veracity of the 12 discovery responses historically by Johnson &amp; 13 Johnson, correct? 14 A. It is my understanding that this is 15 not within the scope of what I was here today 16 to talk about. 17 Q. Okay. And if you look in the 18 Affidavit, Mr. Ashton actually attaches one 19 of the depositions from the Westfall case, 20 correct? 21 MR. BERNARDO: Object to the 22 form of the question, same objection with 23 respect to the scope. 24 THE WITNESS: It says that's 25 what it is.</p>	<p style="text-align: right;">Page 271</p> <p>1 BY MR. C. PLACITELLA: 2 Q. Right. 3 It was a videotaped deposition of 4 Alfred Chidester; do you see that? 5 A. That's what it says. 6 Q. And when he attaches the 7 deposition, he doesn't reference at all the 8 depositions of the scientists who testified 9 in the Westfall case who said they found 10 asbestos in the mine, does he? 11 MR. BERNARDO: Object to the 12 form of the question. 13 THE WITNESS: I'm not here 14 today to talk about this. So I have no idea 15 what he did or didn't do or why he did or 16 didn't do. 17 BY MR. C. PLACITELLA: 18 Q. Ma'am, why don't you take a look at 19 the Affidavit and see if he attaches anywhere 20 the transcripts of the actual scientists who 21 did the testing and who've testified under 22 oath, as we went through before, that they 23 found asbestos in the mine. Take a look, see 24 if it's there. 25 A. I don't see any other testimony,</p>
<p style="text-align: right;">Page 272</p> <p>1 no. 2 Q. He certainly didn't attach the 3 testimony of Dr. Hemstock that I put up here 4 on the screen, who testified that he found 5 chrysotile asbestos in the mine, did he? 6 MR. BERNARDO: Object to the 7 form of the question. Object to the use of 8 this Affidavit. And this testimony is beyond 9 the scope of this notice. 10 THE WITNESS: I have not seen 11 this before. My understanding it is beyond 12 the scope. And I'm -- I would have to read 13 this whole thing. 14 BY MR. C. PLACITELLA: 15 Q. Okay. And, ma'am, so when this 16 Mr. Talc, Johnson &amp; Johnson's Mr. Talc stated 17 under oath in an Affidavit that the talc and 18 the mine was asbestos-free, that was a fib, 19 right? 20 MR. BERNARDO: Object to the 21 form of the question. Same objection with 22 respect to the scope. 23 THE WITNESS: Are you referring 24 to Mr. Ashton when you say -- 25 BY MR. C. PLACITELLA:</p>	<p style="text-align: right;">Page 273</p> <p>1 Q. Yes, ma'am. 2 A. -- "Mr. Talc"? 3 Q. Yes, ma'am. 4 A. I know him as Mr. Ashton. 5 I -- I can't comment on this. I 6 did not come here today to discuss this. 7 Q. Do you know how many cases were 8 dismissed for people by -- that -- how many 9 cases this Affidavit caused to be dismissed? 10 MR. BERNARDO: Object to the 11 form of the question, beyond the scope. 12 You can answer in your personal 13 capacity if you can. 14 THE WITNESS: I do not know. 15 BY MR. C. PLACITELLA: 16 Q. Do you think this was an okay thing 17 to do? 18 MR. BERNARDO: Same objection. 19 BY MR. C. PLACITELLA: 20 Q. The Chief Scientist in talc for 21 Johnson &amp; Johnson, does Johnson &amp; Johnson 22 think this was an okay thing to do, to file 23 an Affidavit saying there's no evidence, 24 when, in fact, he was involved in the lawsuit 25 himself and saw the evidence, think that's</p>

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<p style="text-align: right;">Page 274</p> <p>1 okay?</p> <p>2 MR. BERNARDO: Same objection.</p> <p>3 THE WITNESS: I can't answer</p> <p>4 that.</p> <p>5 BY MR. C. PLACITELLA:</p> <p>6 Q. Well, I'm not asking if you can</p> <p>7 answer. I'm asking you, Johnson &amp; Johnson,</p> <p>8 do you think that's okay --</p> <p>9 MR. BERNARDO: Same objection.</p> <p>10 BY MR. C. PLACITELLA:</p> <p>11 Q. -- to do that?</p> <p>12 MR. BERNARDO: Not here to</p> <p>13 answer questions beyond the scope of the</p> <p>14 notice.</p> <p>15 THE WITNESS: I can't answer</p> <p>16 that.</p> <p>17 BY MR. C. PLACITELLA:</p> <p>18 Q. You can't or you won't?</p> <p>19 A. I'm not here today to talk about</p> <p>20 that.</p> <p>21 Q. Okay.</p> <p>22 MR. C. PLACITELLA: Can you</p> <p>23 give me 446?</p> <p>24 (Exhibit J&amp;J-446, Agreement, is</p> <p>25 marked for identification.)</p>	<p style="text-align: right;">Page 275</p> <p>1 BY MR. C. PLACITELLA:</p> <p>2 Q. Take a second, because it's big.</p> <p>3 Can you take a look at that,</p> <p>4 please?</p> <p>5 446 is an Agreement between Cypress</p> <p>6 Minerals and Johnson &amp; Johnson, dated</p> <p>7 January 6, 1989; do you see that?</p> <p>8 MR. BERNARDO: Object to the</p> <p>9 form of the question, beyond the scope of the</p> <p>10 notice.</p> <p>11 BY MR. C. PLACITELLA:</p> <p>12 Q. That was during the time that you</p> <p>13 were working on the talc cases, right?</p> <p>14 A. This is during the time that I was</p> <p>15 employed by Johnson &amp; Johnson, yes.</p> <p>16 Q. Okay. And according to Exhibit I,</p> <p>17 Johnson &amp; Johnson was named in numerous cases</p> <p>18 as of 1989, correct?</p> <p>19 MR. BERNARDO: Object to the</p> <p>20 form of the question.</p> <p>21 THE WITNESS: I've never seen</p> <p>22 this before. I don't know how to read it.</p> <p>23 This doesn't seem to be within scope. And so</p> <p>24 I can't comment.</p> <p>25 BY MR. C. PLACITELLA:</p>
<p style="text-align: right;">Page 276</p> <p>1 Q. Ma'am, there's -- mentioned is the</p> <p>2 Andonian case, correct?</p> <p>3 A. I see that name.</p> <p>4 Q. All right. That's the Affidavit</p> <p>5 that I just showed you, right --</p> <p>6 A. Yes, you did.</p> <p>7 Q. -- from Mr. Miller?</p> <p>8 And then there's another one, the</p> <p>9 Miller case; do you see that?</p> <p>10 A. I see those names.</p> <p>11 Q. Okay. And in preparing for today's</p> <p>12 deposition, did you look at any of the</p> <p>13 discovery from any of those cases?</p> <p>14 MR. BERNARDO: Object to the</p> <p>15 form of the question.</p> <p>16 THE WITNESS: No, I did not.</p> <p>17 BY MR. C. PLACITELLA:</p> <p>18 Q. Okay. And if you look at the next</p> <p>19 page, do you see that they actually detail</p> <p>20 where the cases are filed and they total that</p> <p>21 as of 1989 there were 1,827 cases involving</p> <p>22 Windsor at that point in time; do you see</p> <p>23 that?</p> <p>24 MR. BERNARDO: Object to the</p> <p>25 form of the question, beyond the scope of the</p>	<p style="text-align: right;">Page 277</p> <p>1 notice. She's not here as a corporate</p> <p>2 representative with respect to the litigation</p> <p>3 profile.</p> <p>4 THE WITNESS: All I can see is</p> <p>5 what you point out to me in the numbers and I</p> <p>6 have not seen this before.</p> <p>7 BY MR. C. PLACITELLA:</p> <p>8 Q. And you have not reviewed in</p> <p>9 preparation for today's deposition any of the</p> <p>10 discovery responses from any of those 1,800</p> <p>11 cases, correct?</p> <p>12 MR. BERNARDO: Object to the</p> <p>13 form of the question.</p> <p>14 THE WITNESS: It is my</p> <p>15 understanding that these were not within the</p> <p>16 scope of the notice.</p> <p>17 BY MR. C. PLACITELLA:</p> <p>18 Q. And how do you say that?</p> <p>19 A. Excuse me?</p> <p>20 Q. Why is that?</p> <p>21 Why is that?</p> <p>22 Why aren't they in the scope?</p> <p>23 A. Because that was not our</p> <p>24 interpretation of this and there seems to be</p> <p>25 some misunderstanding about that.</p>

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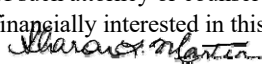
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<p>1 Q. So you are -- Johnson &amp; Johnson, 2 you have an interpretation or is that 3 something the lawyer told you? 4 MR. BERNARDO: Object to the 5 form of the question. 6 THE WITNESS: That is my 7 understanding. 8 BY MR. C. PLACITELLA: 9 Q. Okay. So when you prepared for 10 today's deposition, you didn't look at any of 11 the discovery responses from any of these 12 1,800 cases, correct? 13 A. That's correct. 14 Q. Okay. And you didn't even know 15 about the false affidavits that Roger Miller 16 filed in connection with these cases, did 17 you? 18 MR. BERNARDO: Object to the 19 form of the question, characterization of the 20 Affidavit. 21 THE WITNESS: I can't comment 22 one way or the other on the affidavits. 23 BY MR. C. PLACITELLA: 24 Q. Okay. Now, at this same period of 25 time while you were handling these cases,</p>	<p>1 Johnson &amp; Johnson, or you were the point 2 person, destroyed all the records they had -- 3 MR. BERNARDO: Object. 4 BY MR. C. PLACITELLA: 5 Q. -- at the mine, correct? 6 MR. BERNARDO: Object to the 7 form of the question, outside the scope of 8 the notice. This witness is not here to 9 testify with respect to documentation from 10 the mine. 11 BY MR. C. PLACITELLA: 12 Q. Ma'am, you understand that part of 13 the obligation of a company is to turn over 14 the records it has in the context of 15 discovery, correct? 16 A. I know that their obligation is to 17 turn over whatever is requested. 18 Q. And to keep, when they're sued over 19 and over again, to keep those records, 20 correct? 21 MR. BERNARDO: Object. 22 BY MR. C. PLACITELLA: 23 Q. You know that? 24 MR. BERNARDO: Object to the 25 form of the question, calls for a legal</p>
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<p>1 conclusion. 2 (Reporter clarification.) 3 MR. BERNARDO: Calls for a 4 legal conclusion. This witness is not here 5 to testify with respect to legal hold 6 obligations. 7 THE WITNESS: I don't know the 8 specifics of any requirements. 9 BY MR. C. PLACITELLA: 10 Q. Ma'am, when you certified answers 11 to interrogatories under oath in the 12 Krushinski case, you did it without the 13 benefit of any of the documents that were 14 kept at the mine where the product came out, 15 right? 16 MR. BERNARDO: Object to the 17 form of the question. 18 THE WITNESS: As I've -- I've 19 already addressed, that there were no 20 specific documents that were in response to 21 the questions. That we relied upon the 22 knowledge and the expertise of the particular 23 people who answered the questions. 24 BY MR. C. PLACITELLA: 25 Q. Ma'am, no one ever told you as the</p>	<p>1 corporate representative of Johnson &amp; Johnson 2 that all of the records related to the mine 3 were actually destroyed in 1989 while 4 litigation was pending? 5 You did not know that before you 6 came here today? 7 MR. BERNARDO: Object to the 8 form of the question. 9 Chris, I've said this many 10 times and I'm going to begin to instruct the 11 witness not to answer, because this is 12 nothing short of harassment. 13 MR. C. PLACITELLA: Yeah, well, 14 we'll see. 15 MR. BERNARDO: No, no, let me 16 finish. 17 You know she is not here to 18 address this. We've made that abundantly 19 clear. 20 MR. C. PLACITELLA: I know what 21 you think. 22 MR. BERNARDO: You continue -- 23 it's not what I think. 24 MR. C. PLACITELLA: That's what 25 you think.</p>

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<p>Page 282</p> <p>1 MR. BERNARDO: It's what we've 2 told you. And we've made it abundantly 3 clear. And you're now asking her questions 4 about legal holds and documents that you well 5 know the response and position on. 6 MR. C. PLACITELLA: Okay, okay. 7 BY MR. C. PLACITELLA: 8 Q. Ma'am, did you know that when you 9 were certifying answers to interrogatories 10 that all of the documents related to the 11 Hammondsville mine were destroyed; did you 12 know that? 13 MR. BERNARDO: Object to the 14 form of the question and the 15 characterization. 16 THE WITNESS: I don't know 17 anything about documents at the mines. 18 BY MR. C. PLACITELLA: 19 Q. I'm going to show you what's been 20 marked J&amp;J-456. 21 (Exhibit J&amp;J-456, Memo, is 22 marked for identification.) 23 BY MR. C. PLACITELLA: 24 Q. J&amp;J-456 is a memo from R. Denton on 25 Johnson &amp; Johnson letterhead.</p> <p>Page 284</p> <p>1 Q. Is today the first time that you 2 learned -- 3 THE COURT REPORTER: I'm sorry, 4 I didn't get the tail end of his objection. 5 MR. BERNARDO: Sorry. And 6 objected to asking the witness about this 7 document. She's not answering in a corporate 8 capacity. 9 BY MR. C. PLACITELLA: 10 Q. Is today the first time that you 11 learned that when you were certifying 12 interrogatories under oath that the documents 13 concerning the mining operation of 14 Hammondsville were destroyed before you ever 15 answered the interrogatory? 16 MR. BERNARDO: Object to the 17 form. 18 BY MR. C. PLACITELLA: 19 Q. Today's the first time you learned 20 that? 21 MR. BERNARDO: Object to the 22 form of the question, same objections as 23 before. 24 THE WITNESS: I have not seen 25 this before. It's my understanding that this</p>	<p>Page 283</p> <p>1 Who's R. Denton? 2 A. I don't know. 3 Q. To W. Ashton. That's Bill Ashton, 4 right? 5 A. I would assume so. 6 Q. He's the same Ashton who executed 7 the Affidavit we just went through, correct? 8 A. Yes, he is. 9 Q. Okay. And on page 3 of the 10 Johnson &amp; Johnson memo it states, quote, The 11 specifics of the mining operation at 12 Hammondsville are uncertain, as most of the 13 pre-Luzenac records were destroyed by the 14 mine management just -- staff, just prior to 15 the J&amp;J divestiture and the Cyprus purchase. 16 Do you see that? 17 MR. BERNARDO: Object to the 18 form of the question. 19 BY MR. C. PLACITELLA: 20 Q. Do you see that? 21 MR. BERNARDO: Outside the 22 scope of the notice and object to -- 23 (Multiple speakers, 24 overlapping, unintelligible crosstalk.) 25 BY MR. C. PLACITELLA:</p> <p>Page 285</p> <p>1 is not what I'm here to discuss. 2 BY MR. C. PLACITELLA: 3 Q. Ma'am, I'm asking you a question. 4 When you certified interrogatories 5 under oath, is this the first time that you 6 learned that the documents from the mine, the 7 Hammondsville mine that was the source for 8 the baby powder were destroyed? It's a yes 9 or no answer. 10 MR. BERNARDO: Object to the 11 form of the question. 12 THE WITNESS: I'm trying to 13 answer you. I am not here today to talk 14 about this. This is the first I have seen 15 it. 16 MR. C. PLACITELLA: Okay. 17 Let's take a break. 18 THE VIDEOTAPE OPERATOR: The 19 time is 3:56 p.m., off the record. 20 (Brief recess.) 21 THE VIDEOTAPE OPERATOR: Time 22 is 4:18 p.m., on the record. 23 MR. BERNARDO: So 24 Mr. Placitella and I discussed how much more 25 time he believes he needs to take this</p>
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<p style="text-align: right;">Page 286</p> <p>1 deposition. And I believe he indicated at 2 least several more hours. 3 I also have a direct 4 examination that I would like to do of the 5 witness. 6 Miss Musco during the break 7 told me that she's been here all day and 8 getting tired. And that if we're going to 9 have to continue, she would prefer to do that 10 on a separate date. 11 Mr. Placitella and I obviously 12 from the transcript disagree as to what the 13 proper scope of this deposition is and should 14 be, but we will sort that out among ourselves 15 and possibly or probably with Judge Viscomi. 16 I will reserve my right to do a 17 direct exam of Miss Musco. 18 But, otherwise, we agree that 19 after marking and having Miss Musco describe 20 the box of documents that she has brought 21 with her today, we will adjourn for today and 22 meet and confer as to the remainder of the 23 deposition. 24 Is that a fair 25 characterization, Mr. Placitella?</p>	<p style="text-align: right;">Page 287</p> <p>1 MR. C. PLACITELLA: We agree. 2 MR. BERNARDO: Look at that. 3 See what happens on a Friday afternoon. 4 MR. C. PLACITELLA: We can 5 always agree to disagree. 6 MR. BERNARDO: Well, do you 7 want to ask her to -- or how do you -- 8 MR. C. PLACITELLA: Well, I 9 want to just go through these documents, 10 identify them and have them marked and this 11 way we'll save time next time. 12 MR. BERNARDO: Do you 13 understand what he's asking you to do? 14 THE WITNESS: Yes. 15 BY MR. C. PLACITELLA: 16 Q. So the first one is -- 17 MR. BERNARDO: So let me just 18 for the record point out that -- that we 19 brought with us today a banker's box of 20 various binders and other documents that 21 Miss Musco had reviewed or otherwise 22 considered in connection with her preparation 23 for today's deposition. And we're going to 24 have Miss Musco describe each of them for the 25 record.</p>
<p style="text-align: right;">Page 288</p> <p>1 (Exhibit P-6, Depositions and 2 testimony of Dr. Hopkins, is marked for 3 identification.) 4 BY MR. C. PLACITELLA: 5 Q. All right. What's that marked, 6 P-6? 7 A. Yeah, P-6. 8 Q. All right. Marked P-6, what's P-6? 9 A. P-6 is the depositions and 10 testimony of Dr. Hopkins, which I reviewed. 11 Q. Okay. Did you look at any of the 12 ones I took? 13 A. Excuse me? 14 MR. BERNARDO: Matter of fact, 15 I think she did. 16 BY MR. C. PLACITELLA: 17 Q. Did you look at the ones I took? 18 A. Oh, I was most interested in those. 19 Q. Okay. So then you know all about 20 the chart. 21 (Exhibit P-7, Testimonies and 22 interrogatories for Selby and Krushinski, is 23 marked for identification.) 24 THE WITNESS: Okay. These are 25 the specific interrogatories of Selby.</p>	<p style="text-align: right;">Page 289</p> <p>1 And -- yeah. 2 BY MR. C. PLACITELLA: 3 Q. Just identify the exhibit number. 4 A. Oh, sorry. 5 Q. Please. 6 A. P-7. 7 Q. Okay. 8 MR. BERNARDO: Please make sure 9 your description is complete for the record. 10 THE WITNESS: Yes, these 11 include testimonies and interrogatories of 12 for Selby and Krushinski, the specific 13 complaints. 14 (Exhibit P-8A, Documents sent 15 to Dr. Hopkins, is marked for 16 identification.) 17 (Exhibit P-8B, Documents sent 18 to Dr. Hopkins, is marked for 19 identification.) 20 THE WITNESS: These are 21 already -- 22 BY MR. C. PLACITELLA: 23 Q. No, stick... Just -- 24 A. Oh, sorry. P-8. 25 Q. Mm-hmm.</p>

<p style="text-align: right;">Page 290</p> <p>1 A. Oh, P-8A, P-8B. And if you put 2 them together these should be everything 3 that's contained in your big binder of all 4 the documents that were sent to Dr. Hopkins. 5 (Exhibit P-9, Unidentified 6 documents, is marked for identification.) 7 THE WITNESS: P-9, these were 8 the specific documents I believe that you 9 sent us, yes, like, two days ago, yes. What 10 they are, I don't know. 11 BY MR. C. PLACITELLA: 12 Q. You don't know what's in there? 13 A. It looks like a lot of scientific 14 stuff. 15 Q. So am I correct that you didn't 16 review any of that in preparation -- 17 A. Yes, I went through it all. 18 Q. Oh, you did? 19 A. Yeah. 20 Q. Oh, okay. 21 (Exhibit P-10, Deposition 22 transcript of Nancy Musco, is marked for 23 identification.) 24 THE WITNESS: P-10 would be the 25 transcript of my deposition in November 28,</p>	<p style="text-align: right;">Page 291</p> <p>1 yeah, 28th. 2 MR. BERNARDO: You can just 3 identify all of these together. 4 THE WITNESS: Yeah, these were 5 specific complaints that I asked to see, 6 Selby, Krushinski and Westfall. 7 (Exhibit P-11, Complaint, is 8 marked for identification.) 9 (Exhibit P-12, Complaint, is 10 marked for identification.) 11 (Exhibit P-13, Complaint, is 12 marked for identification.) 13 THE WITNESS: Oh, I'm sorry, 14 P-13, I keep forgetting, 11, 12, and 13. 15 (Exhibit P-14, Notes, is marked 16 for identification.) 17 THE WITNESS: These were the 18 notes that I took during my conversation with 19 Dr. Hopkins, P-14. 20 MR. BERNARDO: That's 21 everything. 22 BY MR. C. PLACITELLA: 23 Q. Is that everything? 24 MR. BERNARDO: That's 25 everything that's in the box.</p>
<p style="text-align: right;">Page 292</p> <p>1 BY MR. C. PLACITELLA: 2 Q. All right. We have to work out a 3 day. Thank you for -- have a good weekend. 4 MR. PLACITELLA: Happy 5 birthday. 6 (Off-the-record discussion.) 7 THE VIDEOTAPE OPERATOR: This 8 concludes the deposition. The time is 9 4:24 p m. We're off the record. 10 (Witness excused.) 11 (Testimony concluded at 12 4:24 p m.) 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 293</p> <p>1 C E R T I F I C A T E 2 I, Sharon L. Martin, a Notary Public, 3 Certified Court Reporter of the State of New 4 Jersey, Registered Professional Reporter, do 5 hereby certify that prior to the commencement 6 of the examination, 7 NANCY MUSCO 8 was duly sworn by me to testify to the truth, 9 the whole truth and nothing but the truth. 10 I do further certify that the foregoing is a 11 true and accurate transcript of the testimony 12 as taken stenographically by and before me at 13 the time, place and on the date hereinbefore 14 set forth. 15 I do further certify that I am neither a 16 relative nor employee nor attorney nor 17 counsel of any of the parties to this action, 18 and that I am neither a relative nor employee 19 of such attorney or counsel and that I am not 20 financially interested in this action. 21  22 SHARON L. MARTIN, RPR, CUR-NJ-XI02021 23 Notary Public 24 My Commission Expires September 25, 2021 25 Date: 2/19/2019</p>

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# Exhibit 3

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MIDDLESEX COUNTY  
DOCKET NO. MID-L-3095-18 AS

- - -

MARIA FOLEY AND JOSEPH FOLEY,  
husband and wife,

Plaintiffs,

vs.

AVON PRODUCTS, INC., et al.,

Defendants.

(Caption continued on following  
page)

Friday, March 8, 2019

VOLUME II

Videotaped deposition of NANCY  
MUSCO, taken pursuant to Notice at the 1  
Middlesex County Courthouse, 56 Paterson  
Street, New Brunswick, New Jersey 08901,  
commencing at 10:19 AM, on the above date,  
before Constance S. Kent, Certified Court  
Reporter and Notary Public for the State of  
New Jersey.

\* \* \*

MAGNA LEGAL SERVICES  
(866) 624-6221  
[www.MagnaLS.com](http://www.MagnaLS.com)

1                   SUPERIOR COURT OF NEW JERSEY  
2                   LAW DIVISION - MIDDLESEX COUNTY  
3                   DOCKET NO. MID-L-600-18 AS  
4       LISA FRACE, Individually           :  
5       and as representative of the       :  
6       Estate of Carole DiCerbo,       :  
7       deceased.                       :  
8                   Plaintiffs,           :  
9                   vs.                   :  
10                  BRENNTAG NORTH AMERICA,       :  
11       et al.,                       :  
12                   Defendants.           :  
13       -----

14                   SUPERIOR COURT OF NEW JERSEY  
15                   LAW DIVISION - MIDDLESEX COUNTY  
16                   DOCKET NO. MID-L-4252-18 AS  
17       VICMAR GATMAITAN,               :  
18       individually and as               :  
19       Representative of the            :  
20       Estate OF MELISSA E.            :  
21       ROONEY, deceased,               :  
22                   Plaintiffs,           :  
23                   vs.                   :  
24                  IMERYS TALC AMERICA, INC.,       :  
25       et al.,                       :  
26                   Defendants.           :  
27  
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31  
32       (Caption continued on following page.)  
33                   MAGNA LEGAL SERVICES

1                   SUPERIOR COURT OF NEW JERSEY  
2                   LAW DIVISION - MIDDLESEX COUNTY  
3                   DOCKET NO. MID-L-4826-18 AS  
4   EMMA GRIFFIN and WALTER                   :  
5   GRIFFIN, husband and wife,               :  
6   :  
7                   Plaintiffs,                   :  
8   :  
9                   v.                               :  
10   :  
11   CYPRUS AMAX MINERALS                   :  
12   COMPANY, et al.,                        :  
13   :  
14                   Defendants.                   :  
15

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16                   SUPERIOR COURT OF NEW JERSEY  
17                   LAW DIVISION - MIDDLESEX COUNTY  
18                   DOCKET NO. MID-L-5368-17 AS  
19   MATTHEW HODJERA and                   :  
20   SYLVIA DUFF-PETO,                       :  
21   :  
22                   Plaintiffs,                   :  
23   :  
24                   v.                               :  
25   :  
26   BORGWARNER MORSE TEC,                   :  
27   LLC, et al,                               :  
28   :  
29                   Defendants.                   :  
30

31                   (Caption continued on following page.)  
32                   MAGNA LEGAL SERVICES

1                   SUPERIOR COURT OF NEW JERSEY  
2                   LAW DIVISION - MIDDLESEX COUNTY  
3                   DOCKET NO. MID-L-6805-18 AS

4           ANITA GRABOWSKI and ALFRED       :  
5           GRABOWSKI, husband and wife,     :  
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10                   SUPERIOR COURT OF NEW JERSEY  
11                   LAW DIVISION - MIDDLESEX COUNTY  
12                   DOCKET NO. MID-L-2456-18 AS

13   ROBERT GREENE, III,                       :  
14   individually and as                       :  
15   Administrator of the                       :  
16   Estate of Deborah                           :  
17   Greene Brake, deceased,                   :  
18   Stephen A. Brake, and                      :  
19   the individual heirs of                    :  
20   the Estate of Deborah                      :  
21   Green Brake,                                :  
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25   (Captioned continued on following page.)  
                  MAGNA LEGAL SERVICES

1 SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MIDDLESEX COUNTY  
2 DOCKET NO. MID-L-7049-16 AS  
3 D'ANGELA M. McNEILL- :  
GEORGE, :  
4 :  
Plaintiff, :  
5 :  
v. :  
6 :  
BRENNTAG NORTH AMERICA, :  
7 et al., :  
8 :  
Defendants. :

9  
10 SUPERIOR COURT OF NEW JERSEY  
11 LAW DIVISION - MIDDLESEX COUNTY  
12 DOCKET NO. MID-L-598-18 AS  
13  
14 LORETTA SELVAGGIO, :  
15 :  
16 Plaintiff, :  
17 :  
18 v. :  
19 :  
20 BREENTAG NORTH AMERICA, :  
21 et al., :  
22 :  
23 Defendants. :

17 SUPERIOR COURT OF NEW JERSEY  
18 LAW DIVISION - MIDDLESEX COUNTY  
DOCKET NO. MID-L-6635-18 AS  
19  
20 LEONARD E. WENDOWSKI, SR., :  
and KATHLEEN WENDOWSKI, :  
husband and wife, :  
21 :  
Plaintiff, :  
22 :  
v. :  
23 :  
IMERYS TALC AMERICA, INC., :  
24 et al., :  
:  
25 Defendants. :  
MAGNA LEGAL SERVICES

1 A P P E A R A N C E S:

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Counsel for the Plaintiffs

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MAGNA LEGAL SERVICES

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12 None

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15 Stipulations

16 Page Line Page Line Page Line

17 None

18

19

20 Question Marked

21 Page Line Page Line Page Line

22 None

23

24

25

MAGNA LEGAL SERVICES

1 THE VIDEOGRAPHER: We are now  
2 on the record.

3 This begins DVD No. 1 in the  
4 deposition of Nancy Musco, in the matter of  
5 Foley versus Avon Products Incorporated, et  
6 al., in the Superior Court of New Jersey,  
7 Law Division, Middlesex County, Docket No.  
8 MID-L-3095-18.

9 Today is March 8th, 2019, and  
10 the time is 10:19 AM.

11 This deposition is being taken  
12 at 56 Paterson Street, New Brunswick, New  
13 Jersey, at the request of Cohen, Placitella  
14 and Roth.

15 The videographer is Ray Moore  
16 of Magna Legal Services and the court  
17 reporter is Connie Kent of Magna Legal  
18 Services.

19 Counsel will be noted on the  
20 stenographic record.

21 Will the court reporter please  
22 swear in the witness.

23 NANCY MUSCO, having been first  
24 duly sworn, was examined and testified as  
25 follows:

MAGNA LEGAL SERVICES

1 - - -

2 E X A M I N A T I O N

3 - - -

4 BY MR. PLACITELLA:

5 Q. Okay. Good morning, Ms. Musco.

6 How are you?

7 A. Good morning.

8 Q. We're here for the second day  
9 of your deposition.

10 I think last time we were  
11 together you told us that you spent  
12 approximately six to seven business days  
13 preparing for your deposition; is that  
14 correct?

15 A. That is correct.

16 Q. Okay. And since the last  
17 deposition, did you review any additional  
18 documents?

19 A. I reviewed my deposition from  
20 that day.

21 Q. Other than the deposition you  
22 gave your first day, did you review  
23 anything else?

24 A. I reviewed some complaint  
25 files, yes.

MAGNA LEGAL SERVICES

1 Q. Okay. What specifically did  
2 you review?

3 A. I specifically asked to see the  
4 Joly file.

5 Q. Okay. And is there a Joly  
6 file?

7 A. When I say the file, I wanted  
8 to see what the actual complaint was in  
9 that case.

10 Q. So when you said you reviewed  
11 the Joly file, the only thing you asked for  
12 was the complaint, nothing else?

13 A. Well, I was curious to see what  
14 the complaint was. In this case it was not  
15 talcosis, I believe it was an acute  
16 bronchitis.

17 Q. Did you understand my question?

18 A. I believe so, yes.

19 Q. Okay. My question to you was:  
20 Did you review -- did you ask to see  
21 anything other than the complaint filed?

22 A. I asked to see the complaint  
23 filed, that was it.

24 Q. Did you ask to see any of the  
25 discovery from the Joly case?

MAGNA LEGAL SERVICES

1           A.     No, I did not because when I  
2     saw the complaint and saw it was acute  
3     bronchitis, I didn't think it was within  
4     the scope.

5           Q.     Okay. Let me ask the question  
6     again: Did you ask to see any of the  
7     discovery from the Joly case?

8                     MR. BERNARDO: Object to the  
9     form of the question.

10                    THE WITNESS: No, I did not.

11     BY MR. PLACITELLA:

12           Q.     Okay. And you understand that  
13     the Joly case involved alleged injury to  
14     exposure to baby powder, correct?

15           A.     That was the alleged  
16     allegation, yes.

17           Q.     In addition to the Joly  
18     complaint, what other documents did you  
19     look at?

20           A.     As I said earlier, my  
21     deposition from last time we met.

22           Q.     So just the Joly complaint and  
23     your deposition?

24           A.     That's correct.

25           Q.     Okay. And did you speak to any

MAGNA LEGAL SERVICES

1 fact witnesses?

2 A. No, I did not.

3 Q. Okay. Did you discuss your --  
4 the substance of your testimony with  
5 Counsel?

6 A. In general terms, yes.

7 Q. Okay. Did anything that -- any  
8 of those discussions cause you to change  
9 your testimony in any material way?

10 MR. BERNARDO: Object to the  
11 form of the question.

12 THE WITNESS: No.

13 BY MR. PLACITELLA:

14 Q. Okay. And how much more time  
15 did you spend between the last deposition  
16 and today's deposition preparing?

17 A. It was about three hours.

18 Q. Three hours.

19 And during the last -- it's  
20 been about three weeks since you were  
21 deposed the last time?

22 A. I believe so, yes.

23 Q. Did you check with the Law  
24 Department for any responsive answers that  
25 were called for that we discussed the last

MAGNA LEGAL SERVICES

1 time in your deposition?

2 A. No, I had no communications  
3 with them.

4 Q. Did you check -- the last time  
5 you told us that there -- there may be  
6 materials that were responsive with outside  
7 counsel.

8 Do you recall that?

9 MR. BERNARDO: Object to the  
10 form of the question.

11 THE WITNESS: Yes.

12 BY MR. PLACITELLA:

13 Q. Okay. Did you check with  
14 outside counsel to determine what  
15 responsive materials were in possession of  
16 your lawyers?

17 A. No, I did not check with any  
18 outside counsels.

19 Q. Last time you told us you  
20 verified interrogatories on more than one  
21 occasion.

22 Do you recall that?

23 A. Yes.

24 Q. Did you look for any additional  
25 interrogatories that you verified in

MAGNA LEGAL SERVICES

1 addition to the Krushinski case?

2 A. No, I did not.

3 Q. Why not?

4 A. Because I did not believe that  
5 they were within the scope.

6 Q. Okay. And you, the witness,  
7 were making a determination about what was  
8 within and not within the scope of the  
9 subpoena served on Johnson & Johnson?

10 A. Yes, my interpretation of it  
11 and also with advice of Counsel.

12 Q. Okay. Now, last time we  
13 addressed a number of topics. We addressed  
14 Johnson & Johnson litigation history.

15 Do you recall that?

16 A. Yes.

17 Q. Okay. We addressed discovery  
18 Johnson -- discovery responses that Johnson  
19 & Johnson says they were able to locate.

20 Do you recall that?

21 A. Yes.

22 Q. Okay. We addressed  
23 representations that were made in some of  
24 those discovery responses.

25 Do you recall that?

MAGNA LEGAL SERVICES

1 A. Yes.

2 Q. Okay. We also discussed the  
3 basis for the representations that were  
4 made in Johnson & Johnson's discovery  
5 responses, correct?

6 A. Yes.

7 Q. Okay. Now, you understand  
8 that -- and during the course of that  
9 deposition, both you and your counsel  
10 objected to the scope of a number of  
11 questions that I asked you, correct?

12 A. Yes.

13 MR. BERNARDO: Object to the  
14 form of the question.

15 BY MR. PLACITELLA:

16 Q. Correct?

17 A. Yes.

18 Q. Okay. And you understand that  
19 we appeared before the court here in  
20 Middlesex County to address the concerns  
21 raised by your counsel, correct?

22 MR. BERNARDO: Object to the  
23 form of the question.

24 THE WITNESS: I understand that  
25 there was a conversation, yes.

MAGNA LEGAL SERVICES

1 BY MR. PLACITELLA:

2 Q. And you understand that that's  
3 why we're here in the courthouse having  
4 your deposition taken as opposed to  
5 Counsel's office, correct?

6 MR. BERNARDO: Object to the  
7 form of the question.

8 THE WITNESS: I know that the  
9 venue was changed at the suggestion of the  
10 court, but...

11 BY MR. PLACITELLA:

12 Q. Okay. Well -- so I'm going to  
13 tell you what I'm going to do today so  
14 we're all on the same page. I'm going to  
15 address the objections that you raised  
16 directly and see if we can sort them out.  
17 Okay?

18 A. Okay.

19 MR. BERNARDO: Objection.

20 BY MR. PLACITELLA:

21 Q. And I'm going to hope to make  
22 clear exactly what information you reviewed  
23 in preparation for your deposition and what  
24 was made available to you. Okay?

25 A. Okay.

MAGNA LEGAL SERVICES

1 MR. BERNARDO: Object to the  
2 form of the question.

3 BY MR. PLACITELLA:

4 Q. And when I'm done with that,  
5 I'm going to finish going through the  
6 information that we believe is relevant to  
7 this deposition. Okay?

8 A. Okay.

9 Q. Okay. So the last time we were  
10 together, at the end of the deposition,  
11 you, Johnson & Johnson, produced a number  
12 of binders that were in a Bankers box.

13 Do you recall that?

14 A. Yes, I do.

15 Q. And you testified that those  
16 binders were documents that you reviewed  
17 and considered in conjunction with your  
18 preparation for the deposition, correct?

19 MR. BERNARDO: Object to the  
20 form of the question and the  
21 characterization of her testimony.

22 THE REPORTER: I'm sorry. Can  
23 we go off the record for a second?

24 THE VIDEOGRAPHER: The time is  
25 now 10:27 AM. We're going off the record.

MAGNA LEGAL SERVICES

1 (Discussion held off the  
2 record.)

3 THE VIDEOGRAPHER: The time is  
4 now 10:28 AM. We are back on the record.  
5 BY MR. PLACITELLA:

6 Q. You and your counsel  
7 represented at the end of the deposition  
8 that the binders that you produced were  
9 documents that you reviewed and considered  
10 in connection with your preparation for the  
11 deposition, correct?

12 MR. BERNARDO: Object to the  
13 form of the question.

14 THE WITNESS: Yes, there were a  
15 number of binders that were in that box,  
16 yes.

17 BY MR. PLACITELLA:

18 Q. Okay. And that you also sent  
19 all of those binders with -- to John  
20 Hopkins and had a conversation about them,  
21 correct?

22 MR. BERNARDO: Object to the  
23 form of the question.

24 And Mr. Placitella, if we could  
25 be specific because there are a lot of

MAGNA LEGAL SERVICES

1 binders and I don't think her testimony was  
2 that all of them were sent.

3 I'm just asking that you let  
4 her see so we can be clear as to what was  
5 sent and not sent to have a clear record.

6 MR. PLACITELLA: Okay.

7 BY MR. PLACITELLA:

8 Q. So you have all the binders in  
9 front of you to your right.

10 Do you see them?

11 A. I see binders, yes.

12 Q. Okay. And do we need to go  
13 through them again so we're all on the  
14 same --

15 A. Well, I need to be familiar  
16 with what specifically they are, yes.

17 Q. Okay. So why don't we start  
18 with the lowest numbered binder, which I  
19 think is 6.

20 A. Yes, 6 is the lowest.

21 Q. Okay. So what is 6?

22 A. It is the deposition of  
23 Dr. Hopkins --

24 Q. Okay.

25 A. -- and testimony.

MAGNA LEGAL SERVICES

1 Q. And you reviewed that?

2 A. I reviewed that, yes. This --  
3 I did not send this or we did not send this  
4 to Dr. Hopkins, but I reviewed it.

5 Q. Okay. And then the next binder  
6 is what?

7 A. This would be P-7.

8 Q. Uh-huh. And P-7 is what?

9 A. This looks to be different  
10 complaint cases, first one being Selby.

11 Q. Do you recall reviewing this  
12 binder?

13 A. Yes.

14 Q. Okay. And did you send this to  
15 Dr. Hopkins?

16 A. No.

17 Q. Okay. But it was one of the  
18 binders that you --

19 A. It was in the box that we  
20 presented to you.

21 Q. And that you relied upon?

22 MR. BERNARDO: Object to the  
23 form of the question.

24 BY MR. PLACITELLA:

25 Q. You reviewed it in preparation  
MAGNA LEGAL SERVICES

1 for your deposition?

2 A. I reviewed, yes.

3 Q. Okay. And what's the next  
4 numbered binder?

5 A. P-8A.

6 Q. All right. Is there an 8A and  
7 an 8B?

8 A. Yes, there is.

9 Q. And what are they collectively?

10 A. They are a lot of it looks like  
11 testing material.

12 Q. And this -- did you review 8A  
13 and 8B in preparation for your deposition?

14 A. I did not review each one of  
15 these, but I was familiar with these and I  
16 believe these were sent to Dr. Hopkins.

17 Q. And then you had a conversation  
18 with Dr. Hopkins about those binders?

19 A. We had a conversation -- a  
20 specific conversation about certain  
21 testing.

22 Q. But -- so those binders were  
23 produced as documents you relied upon for  
24 your deposition, correct?

25 MR. BERNARDO: Object to the  
MAGNA LEGAL SERVICES

1 form of the question.

2 THE WITNESS: I looked at them,  
3 I cannot tell you everything that's in  
4 them, and they were a basis, yes.

5 BY MR. PLACITELLA:

6 Q. Okay. And all those binders  
7 were also sent to -- those binders were  
8 sent to Dr. Hopkins, correct?

9 A. Yes, 8A and 8B.

10 Q. Okay. And you identified them  
11 at the end of the last deposition as part  
12 of your reliance materials, correct?

13 MR. BERNARDO: Object to the  
14 form of the question.

15 THE WITNESS: They're part of  
16 what I saw, yes.

17 BY MR. PLACITELLA:

18 Q. Okay. And then what's the next  
19 numbered --

20 A. P-9.

21 Q. P-9 is what?

22 A. This was something that you  
23 sent to -- to my counsel right before our  
24 last deposition I believe.

25 Q. Right. You understand that I  
MAGNA LEGAL SERVICES

1 had an agreement with your counsel that any  
2 document that Johnson & Johnson did not  
3 produce directly and was not admitted into  
4 a trial or prior deposition that I located  
5 I would send to Counsel so they could share  
6 it with you.

7 You understand that, correct?

8 MR. BERNARDO: Object to the  
9 form of the question.

10 THE WITNESS: I don't know  
11 exactly what your agreement was.

12 BY MR. PLACITELLA:

13 Q. Okay. Well, did you review  
14 that binder?

15 A. I did see this, yes.

16 Q. Okay. Now, in the last  
17 deposition, you were asked specific  
18 questions about the Edley -- the Edley  
19 case.

20 Do you recall that?

21 A. I remember the name.

22 Q. Correct?

23 A. I remember that name, yes.

24 Q. Okay. In fact, I asked you  
25 multiple questions about the Edley case,

MAGNA LEGAL SERVICES

1 correct?

2 A. I believe so.

3 Q. And every time I asked you a  
4 question about the Edley case, your  
5 response to me was basically you don't know  
6 anything about the Edley case, you've never  
7 seen anything about the Edley case,  
8 correct?

9 MR. BERNARDO: Object to the  
10 form of the question.

11 THE WITNESS: Yes, because my  
12 understanding was it was not within the  
13 scope of the notice.

14 BY MR. PLACITELLA:

15 Q. Okay. Well, let's make sure  
16 we're on the same page here. So if --

17 MR. PLACITELLA: Do you have  
18 the iPad?

19 BY MR. PLACITELLA:

20 Q. Under oath on page 105, you  
21 state: I'm not familiar with the cases,  
22 and that includes the Edley and the Yuhas  
23 case, right?

24 A. That's correct.

25 Q. Okay. And then on page 220 and  
MAGNA LEGAL SERVICES

1 221, you were asked again whether in  
2 preparation for the deposition you ever  
3 reviewed any information concerning the  
4 Edley case and you said no, correct?

5 A. That's correct.

6 Q. And then on 21, I said:

7 "So Johnson & Johnson doesn't  
8 know anything about the Edley case?"

9 Mr. -- Mr. Bernardo objected  
10 that it was beyond the scope, and you said:

11 "In preparation for today, I  
12 did not review that case."

13 Correct?

14 MR. BERNARDO: Objection to the  
15 form of the question.

16 THE WITNESS: That's correct.

17 BY MR. PLACITELLA:

18 Q. And you repeated again in  
19 response to questions on 221, that you knew  
20 nothing about the Edley case, correct?

21 A. That's correct.

22 Q. And then on -- I'm sorry.  
23 That's the problem. Then on 2 -- page  
24 223 or 224, I asked you -- and 225, I asked  
25 you questions about an affidavit that was

MAGNA LEGAL SERVICES

1 filed in the Edley case by Roger Miller.

2 Do you recall that?

3 MR. BERNARDO: Object to the  
4 form of the question.

5 And I'm just going to renew the  
6 same objections I made in the transcript  
7 that you're referring to --

8 MR. PLACITELLA: Okay.

9 MR. BERNARDO: -- so as not to  
10 interrupt these questions.

11 MR. PLACITELLA: All right.

12 BY MR. PLACITELLA:

13 Q. Correct? I asked you about the  
14 Miller affidavit --

15 A. Yes, you did.

16 Q. -- from the Edley case?

17 And I showed you the affidavit  
18 and you said you didn't know anything about  
19 it, right?

20 MR. BERNARDO: Object to the  
21 form of the question.

22 THE WITNESS: I was not  
23 familiar with it, no.

24 BY MR. PLACITELLA:

25 Q. Okay. And then on page 227, I  
MAGNA LEGAL SERVICES

1 asked you again about the Miller affidavit  
2 submitted in the Edley case.

3 Do you see that?

4 A. Yes.

5 MR. BERNARDO: Object to the  
6 form of the question. Same objection.

7 BY MR. PLACITELLA:

8 Q. And then again your counsel  
9 objected and you said you didn't know  
10 anything about it, right?

11 MR. BERNARDO: Object to the  
12 form of the question. Same objection.

13 THE WITNESS: Yes, because I  
14 did not believe it was in the scope, so I  
15 had not reviewed it, no.

16 BY MR. PLACITELLA:

17 Q. Okay. Can you go to the 8A  
18 binder, please?

19 This is one of the binders you  
20 reviewed in preparation for your  
21 deposition, correct?

22 A. This was the basis of one --  
23 one of -- some of the conversations that I  
24 had in preparation for this.

25 Q. Okay.

MAGNA LEGAL SERVICES

1 A. Yes.

2 Q. And under 8A, can you go to tab  
3 33, please?

4 A. 33 in 8A?

5 Q. 33 in 8A.

6 Now, 33 in the -- in your  
7 binder, 8A, is captioned in the Edley case,  
8 correct?

9 A. I'm not seeing that it says  
10 Edley here. Oh, yes, okay.

11 Q. Edley. And can you turn to the  
12 next page in your binder? You see there's  
13 an affidavit in the Edley case?

14 A. Yes.

15 Q. Right? And that affidavit is  
16 sworn to by Roger Miller, correct?

17 A. I see that, yes.

18 Q. All right. And the date for  
19 that affidavit -- and that's his signature,  
20 and the date for that affidavit is 1991,  
21 correct?

22 A. Yes.

23 Q. Okay. And he was the president  
24 of your mining company, correct?

25 MR. BERNARDO: Object to the  
MAGNA LEGAL SERVICES

1 form of the question and beyond the scope  
2 of the notice.

3 The witness can answer in her  
4 personal capacity, and I'll assert this for  
5 any questions on --

6 MR. PLACITELLA: You can assert  
7 all you want, but --

8 MR. BERNARDO: Mr.  
9 Placitella --

10 MR. PLACITELLA: -- it's in her  
11 review materials.

12 I just want to make clear so I  
13 court that listens to your objections about  
14 scope understands exactly what we're  
15 talking about.

16 MR. BERNARDO: And I appreciate  
17 that, Mr. Placitella. I'm not trying to  
18 pick a fight here and you seem to be  
19 getting angry.

20 MR. PLACITELLA: I'm not angry.

21 MR. BERNARDO: But you  
22 interrupted my objection, and I'm simply  
23 trying to preserve it for the record so  
24 that I don't repeat it and interrupt your  
25 questioning.

MAGNA LEGAL SERVICES

1                   So I'm asking for a running  
2   objection with respect to questions about  
3   this affidavit.

4                   MR. PLACITELLA:   Okay.   You  
5   have any running objection you want about  
6   what's ever in the books that she reviewed.  
7   How's that?

8                   MR. BERNARDO:   Thank you.

9                   MR. PLACITELLA:   Okay.

10   BY MR. PLACITELLA:

11           Q.     So what he says is:  
12                   "I'm the president of Windsor  
13   Minerals."

14                   Correct?

15           A.     I see that in the second  
16   paragraph, yes.

17           Q.     And what he says is that:  
18                   "The exclusive business of  
19   Windsor Minerals has been for the last  
20   18 years, the mining and milling of talc  
21   from a single mining district in Windsor,  
22   Vermont."

23                   Correct?

24           A.     That's what it says here.

25           Q.     Okay.   And:

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1 "The mining district is the  
2 exclusive source for all of the Johnson's  
3 Baby Powder sold in the United States."

4 Correct?

5 A. That's what it says here.

6 Q. Okay. It says:

7 "In addition to supplying the  
8 talc for Johnson's Baby Powder, Windsor  
9 Minerals also sells a portion of its  
10 product to independent industrial users."

11 Correct?

12 A. That's what it says.

13 Q. Okay. And what he swears to  
14 under oath, he says:

15 "All of the talc mined by  
16 Windsor Minerals, Inc., whether it is  
17 ultimately sold to industrial users or used  
18 in Johnson's Baby Powder, is sampled and  
19 tested for the presence of asbestos."

20 Correct?

21 A. That's what he says.

22 Q. And he swears under oath:

23 "No evidence of the presence of  
24 asbestos in Windsor Minerals product has  
25 ever been revealed by this testing."

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1 Correct?

2 A. That's what it says, yes.

3 Q. Okay. And then this affidavit  
4 was then used to have Mr. Edley, right here  
5 in this courthouse, dismiss his lawsuit  
6 based upon the representations made by  
7 Windsor Minerals and Johnson & Johnson,  
8 correct?

9 MR. BERNARDO: Object to --  
10 object to the form of the question. Well  
11 beyond the scope of the notice.

12 You can answer in your  
13 individual capacity.

14 THE WITNESS: I -- that seems  
15 to be a legal question. I don't know what  
16 was used or what wasn't used.

17 BY MR. PLACITELLA:

18 Q. Okay. Well, let's go to the  
19 cover letter that's in your binder.

20 You see there's a binder  
21 here -- a letter on July 23rd, 1997?

22 A. Which tab is that?

23 Q. It's still under tab 33.

24 MR. BERNARDO: And same  
25 objection with respect to the use of this

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1 document and questions pertaining to it.

2 MR. PLACITELLA: You can have a  
3 running objection to every question I ask  
4 about what's in her binder.

5 MR. BERNARDO: Okay. From time  
6 to time --

7 MR. PLACITELLA: You don't have  
8 to keep doing it.

9 MR. BERNARDO: From time to  
10 time, I will renew it.

11 MR. PLACITELLA: Okay.

12 THE WITNESS: What are you  
13 referring to here?

14 BY MR. PLACITELLA:

15 Q. The July 23rd, 1987 letter.

16 A. I see that, yes.

17 Q. Okay. And these -- this is  
18 from your lawyers to Ronald Grayzel, who  
19 has an office right here in Edison,  
20 New Jersey.

21 Do you see that?

22 A. I see that's the address here,  
23 yes.

24 Q. Right. And your lawyer's  
25 offices are right here two blocks from the

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1 courthouse.

2 Do you see that?

3 A. I don't -- I see that there's  
4 some of the addresses. I don't even know  
5 who any of these people are, so that's what  
6 it says here.

7 Q. And it says:

8 "Dear Mr. Grayzel, Enclosed  
9 please find the affidavit on behalf of  
10 Windsor Minerals signed by Roger Miller,  
11 president of Windsor Minerals since 1968.  
12 Also enclosed you'll find an assay from  
13 McCrone Environmental Services."

14 Do you see that?

15 A. That's what it says.

16 Q. "I trust that these documents  
17 will now enable you to sign a dismissal as  
18 was done in the Yuhas file."

19 Do you see that?

20 A. That's what it says.

21 Q. Okay. And then if you go to  
22 the first page in your tab 33, on the same  
23 exact date that your letter was sent,  
24 Mr. Grayzel signed a stipulation of  
25 dismissal with prejudice dismissing his

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1 client's case against your company,  
2 correct?

3 MR. BERNARDO: Object to the  
4 form of the question.

5 THE WITNESS: That's what it  
6 says here.

7 BY MR. PLACITELLA:

8 Q. Right. Now, you also stated in  
9 your prior deposition that you have no  
10 knowledge of the Yuhas case and what  
11 happened to it, correct?

12 A. And that's correct.

13 Q. But actually you do know what  
14 happened to it because in your tab 33, your  
15 lawyers make clear what happened to the  
16 Yuhas file, it was dismissed just like the  
17 Edley case, correct?

18 MR. BERNARDO: Object --

19 BY MR. PLACITELLA:

20 Q. That's what it says.

21 MR. BERNARDO: Object to the  
22 form of the question.

23 THE WITNESS: That's what it  
24 says here, yes.

25 BY MR. PLACITELLA:

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1           Q.     Now, do you recall I asked you  
2     last time whether Mr. Miller had signed  
3     other similar affidavits during the course  
4     of the litigation that were used to get  
5     people to dismiss their cases.

6                     Do you recall that?

7           A.     I don't recall that specific  
8     question, no.

9           Q.     Do you recall whether I asked  
10    you about the Faye Miller case?

11          A.     I don't remember that, no.

12          Q.     Can you go to your binder, P-9.  
13    P-9, if you flip to, like, the third page  
14    is an affidavit in the Faye Miller case  
15    signed by Roger Miller.

16                     Do you see that? I put it up  
17    on the screen.

18          A.     I see that on the screen, yes.

19          Q.     All right. And again, Roger  
20    Miller states under oath:

21                     "All of the talc mined by  
22    Windsor Minerals has been regularly sampled  
23    and tested for the presence of asbestos.  
24    No evidence of the presence of asbestos in  
25    Windsor Minerals product has ever been

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1 revealed by this testing."

2 Correct?

3 MR. BERNARDO: Object to the  
4 form of the question.

5 BY MR. PLACITELLA:

6 Q. That's what he says, right?

7 MR. BERNARDO: Beyond the  
8 scope.

9 You can answer in your  
10 individual capacity if you can.

11 THE WITNESS: I see that it  
12 says that there, yes.

13 BY MR. PLACITELLA:

14 Q. Okay. And the last time we  
15 were together, you also testified under  
16 oath that the only thing you reviewed in  
17 reference to the Gambino case was the  
18 complaint as that was all that was  
19 available.

20 Do you recall that testimony?

21 A. I remember talking about the  
22 Gambino, yes. And I reviewed -- or I --  
23 the things that I reviewed were any  
24 responses to discovery questions or  
25 interrogatories.

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1 Q. Okay. So let's -- let's look  
2 at, to be clear, what your testimony was as  
3 it related to the Gambino case.

4 On page 105, I first raised the  
5 Gambino case with you. I said:

6 "What do you know about the  
7 Gambino case?"

8 And you wrote (sic):

9 "That is the one -- one of the  
10 ones that was listed which you requested  
11 documents, but I -- that's why I asked for  
12 that chart, to refresh myself, because the  
13 top of my head (sic), I don't remember what  
14 Gambino was."

15 Do you remember that?

16 A. Yes.

17 Q. Okay. And then on page 214, I  
18 asked you additional questions about the  
19 Gambino case, and 215. And I asked you:

20 "So in the same years that the  
21 scientists testified that the mines once  
22 owned by Johnson & Johnson contained  
23 asbestos, you were sued in Middlesex County  
24 in the Gambino case, correct?"

25 Mr. -- Mr. Bernardo objects to  
MAGNA LEGAL SERVICES

1 the scope of my question, and I said:

2 "Here, I put it up there for  
3 you. It's 291. Do you see that?

4 "All I know is the years are  
5 the same.

6 "Right. In Middlesex County,  
7 New Jersey. Do you see that?

8 "I see that, yes.

9 "And it involved baby powder,  
10 correct?

11 "Answer: I see that.

12 "And according to your earlier  
13 testimony, your lawyers didn't have any  
14 other information on Gambino to provide to  
15 you."

16 And you said under oath:

17 "There were no discovery  
18 records."

19 Do you recall that testimony?

20 A. Yes.

21 Q. Okay.

22 MR. PLACITELLA: Can you give  
23 me J&J 316, please?

24 BY MR. PLACITELLA:

25 Q. J&J-316 is the Gambino file

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1     obtained from the Middlesex County  
2     Courthouse, and if you flip through it,  
3     there are interrogatory answers on behalf  
4     of Johnson & Johnson.

5                     Do you see that?

6                     MR. BERNARDO: Object to the  
7     form of the question.

8                     I'm also going to object,  
9     Chris, because, for purposes of allowing  
10    the witness to be prepared, it was my  
11    understanding, and perhaps I misunderstood,  
12    that we had an agreement that if you were  
13    going to ask the witness questions about  
14    documents that you found or obtained from a  
15    court file, that they would be provided in  
16    advance so the witness would have an  
17    opportunity to review them.

18                    Having made that objection, the  
19    witness can respond as she can.

20                    MR. PLACITELLA: Well, I'm  
21    going to put a response to that on the  
22    record when somebody reads this.

23                    Our agreement was I would  
24    provide you any documents that I located  
25    that weren't used in prior Johnson &

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1 Johnson depositions or admitted at trial  
2 against Johnson & Johnson. That was our  
3 agreement.

4 BY MR. PLACITELLA:

5 Q. Ms. Musco, did you know that  
6 this -- that these sets of interrogatories  
7 were testified to by Dr. Hopkins in his  
8 deposition?

9 MR. BERNARDO: Object to the  
10 form of the question.

11 THE WITNESS: No.

12 BY MR. PLACITELLA:

13 Q. Did you know that they were  
14 actually used in trial here in Middlesex  
15 County in this very courtroom?

16 A. No, I do not know that.

17 Q. And when you said that there  
18 were no discovery responses available in  
19 the Gambino case under oath, these were  
20 responses that were never supplied to you,  
21 and I'm talking about you, I mean Johnson &  
22 Johnson's representative --

23 MR. BERNARDO: Object --

24 BY MR. PLACITELLA:

25 Q. -- correct?

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1 MR. BERNARDO: Object to the  
2 form of the question.

3 THE WITNESS: I did not see  
4 these before, no.

5 BY MR. PLACITELLA:

6 Q. Okay. So when you testified  
7 before under oath that Johnson & Johnson  
8 did not have any discovery responses as it  
9 related to the Gambino case, that was, in  
10 fact, a false statement, correct?

11 MR. BERNARDO: Object to the  
12 form of the question.

13 THE WITNESS: To the best of my  
14 understanding, it was true at the time.

15 BY MR. PLACITELLA:

16 Q. But what -- but it really was a  
17 false statement, ma'am. I'm not talking  
18 about you, Nancy Musco, I'm talking about  
19 Johnson & Johnson. You're here on behalf  
20 of Johnson & Johnson, and clearly Johnson &  
21 Johnson had this information in its  
22 possession when you testified the first  
23 time that there were no discovery responses  
24 available from the Gambino case, correct?

25 MR. BERNARDO: Object to the  
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1 form of the question and to the  
2 characterization of her prior testimony.

3 THE WITNESS: I don't know  
4 that.

5 BY MR. PLACITELLA:

6 Q. Okay. You -- last time I asked  
7 you about --

8 MR. PLACITELLA: Do you have  
9 the Hopkins chart?

10 BY MR. PLACITELLA:

11 Q. Last time I asked you some  
12 questions about a chart that Dr. Hopkins  
13 prepared during his testimony.

14 Do you recall that?

15 A. Yes.

16 Q. And what you told me under oath  
17 was that you never looked at the Hopkins  
18 chart in preparation for your deposition,  
19 correct?

20 A. That was correct, yes.

21 Q. And you said that you were  
22 never shown the Hopkins chart in  
23 preparation for your deposition, correct?

24 A. I had not seen it specifically,  
25 no.

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1 Q. And you further testified under  
2 oath that you never discussed the Hopkins  
3 chart with Dr. Hopkins himself, correct?

4 A. No, I did not.

5 Q. Okay. Now, can you go to book  
6 8B? And can you turn to tab 78, please?

7 Now, in your book that you gave  
8 me last -- at the end of the last  
9 deposition -- are you with me? Are you on  
10 tab 78? Yes?

11 A. I am.

12 Q. And what you have on tab 78 is  
13 a chart with Exhibit No. Hopkins 28,  
14 correct?

15 A. That's what it says, yes.

16 Q. Okay. And what you have in  
17 front of you, can you hold it up, is the  
18 big version of that chart so you can read  
19 it, correct? I have one here.

20 A. It looks to be the same, yes.

21 Q. All right. Hopkins-28, right?

22 A. That's what it's called, yes.

23 Q. Hopkins-28, the big version I  
24 have, is the blowup of the same chart in  
25 your book tab No. 78, correct?

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1 A. Yes.

2 Q. Okay. And the last time we  
3 were together I asked you questions about  
4 the Westfall case.

5 Do you recall that?

6 A. Yes, I do.

7 Q. Okay. And I think you said  
8 that you were vaguely familiar with the  
9 Westfall case, is that fair?

10 A. Yes.

11 Q. And that you denied any  
12 knowledge that the mine at issue in the  
13 Westfall case had asbestos in it, correct?

14 MR. BERNARDO: Object to the  
15 form of the question, beyond the scope of  
16 the notice, and the witness --

17 THE REPORTER: I'm sorry, sir?

18 MR. BERNARDO: Object to the  
19 form of the question, beyond the scope of  
20 the notice.

21 The witness may answer in her  
22 personal capacity if she knows.

23 THE WITNESS: What was the  
24 question?

25 BY MR. PLACITELLA:

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1 Q. In your -- well, let's just go  
2 to your testimony.

3 I asked you on page 85:

4 "You knew the mine that was  
5 owned by Johnson & Johnson that was the  
6 issue in the Westfall case had asbestos in  
7 it."

8 Mr. Bernardo objected. I  
9 responded again:

10 "You knew that?"

11 And your response was:

12 "No, I did not. I did not go  
13 into that detail with this because it was  
14 industrial talc."

15 Do you see that?

16 A. Yes.

17 Q. Okay. And I then asked you if  
18 you ever read the deposition of the  
19 scientist who was deposed in the -- in the  
20 Westfall case.

21 Do you recall that?

22 A. Specifically, no.

23 Q. Okay. Well, let's go to your  
24 testimony.

25 You see that on page 206, I

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1 said:

2 "You never knew before you came  
3 here today that Johnson & Johnson's lawyers  
4 sat in a deposition where the scientists  
5 who did the tests on the Johnson & Johnson  
6 mine said they found asbestos in the mine?  
7 You never knew that?"

8 And then there was an objection  
9 by Mr. Bernardo, artfully so, and --

10 MR. BERNARDO: Which he renews  
11 here.

12 MR. PLACITELLA: Which he can  
13 renew here all he wants. Thank you.

14 BY MR. PLACITELLA:

15 Q. And I handed you the transcript  
16 of Dr. Glen Hemstock.

17 Do you see that?

18 A. I see that, yes.

19 Q. And then when I handed it to  
20 you, your attorney, Mr. Bernardo said:

21 "And the same objection to  
22 asking the witness about depositions. It's  
23 beyond the scope and she's not read the  
24 deposition."

25 Do you see that?

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1 A. Yes.

2 Q. Okay. And then I actually  
3 pulled out the Hemstock deposition and  
4 showed it to you and showed you where the  
5 general counsel from Johnson & Johnson was  
6 sitting in a deposition.

7 Do you recall that?

8 A. I recall you showing me that,  
9 yes.

10 Q. Okay.

11 MR. BERNARDO: Same objections  
12 as stated in that transcript.

13 BY MR. PLACITELLA:

14 Q. And do you recall that I --  
15 that I --

16 MR. BERNARDO: Same objections  
17 as stated in that transcript.

18 BY MR. PLACITELLA:

19 Q. That I pointed to you on page  
20 17 of the transcript, and showed you where  
21 the scientist testified under oath that he  
22 found asbestos in the Johnson mine?

23 Do you see that?

24 A. I see that conversation --

25 Q. Okay.

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1 A. -- from last time, yes.

2 Q. And I asked you:

3 "That information was never  
4 relayed to you as the person who was either  
5 testifying here today or who certified  
6 interrogatory answers on behalf of Johnson  
7 & Johnson, correct?"

8 And your answer to me was,  
9 under oath:

10 "I have not seen this before,  
11 no. "

12 Correct?

13 A. I had not seen what you showed  
14 me, no.

15 Q. Okay. Can you go to, in your  
16 book, in your reliance book, 8B, tab 55.

17 You see at tab 55 in your  
18 reliance materials --

19 A. I see --

20 Q. -- is the deposition in the  
21 Westfall case of Glen Hemstock?

22 MR. BERNARDO: Object to the  
23 form of the question.

24 BY MR. PLACITELLA:

25 Q. Do you see that?

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1 A. I see that.

2 Q. Okay. And do you see that  
3 present at the deposition was the general  
4 counsel for Johnson & Johnson?

5 A. Where -- where am I seeing  
6 that?

7 Q. The third page, you flip it  
8 over, and in your book it says, John M.  
9 Beidler, Esquire, General Counsel, Johnson  
10 & Johnson.

11 Do you see that?

12 A. Yes.

13 Q. Okay. And then if you flip to  
14 your tab 57, there's the continuation of  
15 Dr. Hemstock's deposition in the Westfall  
16 case, correct?

17 A. That's what it says, yes.

18 Q. Okay. And if you turn to page  
19 17 of the deposition in your book. Got it?

20 A. Yes.

21 Q. The scientist is asked:

22 "Now, you testified that your  
23 department has tested both processed talc  
24 and raw talc ore from the Emtal mine for  
25 the presence of chrysotile asbestos; is

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1 that correct?

2 "Answer: Yes.

3 "Has your department in its  
4 research found chrysotile asbestos in both  
5 processed talc and raw ore from the Emtal  
6 mine?

7 "Answer: Yes."

8 Do you see that?

9 A. I see it says that, yes.

10 Q. Okay. Now, in your deposition  
11 at page 268, I asked you under oath if you  
12 had any information related to the  
13 affidavit signed by your scientist, William  
14 Ashton.

15 Do you recall that?

16 A. Yes.

17 MR. BERNARDO: Object to the  
18 form of the question, and a running  
19 objection with respect to this affidavit  
20 beyond the scope --

21 MR. PLACITELLA: Okay.

22 MR. BERNARDO: -- of the  
23 notice.

24 BY MR. PLACITELLA:

25 Q. Do you see that?

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1 MR. BERNARDO: She can answer  
2 in her individual capacity.

3 THE REPORTER: I'm so sorry.  
4 Can we go off the record?

5 THE VIDEOGRAPHER: The time is  
6 now 11:05 AM. We are going off the record.

7 (Discussion held off the  
8 record.)

9 THE VIDEOGRAPHER: The time is  
10 now 11:07 AM. We are back on the record.

11 BY MR. PLACITELLA:

12 Q. Okay. So I'm going to go to --  
13 I asked you questions, if you recall, about  
14 what was attached to Dr. Ashton's  
15 affidavit, and I asked you whether he  
16 had -- attached to that affidavit was  
17 testimony from the Westfall case.

18 Do you recall that?

19 A. I recall discussing IT, yes.

20 Q. Okay. And do you recall your  
21 telling me you had no idea what was  
22 attached to the Ashton affidavit?

23 A. I had not seen it before.

24 Q. Right. And what you testified  
25 to under oath was that you had -- you had

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1 never seen and had -- did not have the  
2 Ashton affidavit available to you, correct?

3 MR. BERNARDO: Object to the  
4 form of the question.

5 THE WITNESS: I believe I told  
6 you in the beginning when we talked about  
7 Westfall that because it was dealing with  
8 industrial talc, I did not feel it was  
9 within -- within the scope of the notice  
10 that you had sent.

11 BY MR. PLACITELLA:

12 Q. Ma'am, you testified under oath  
13 that you had never seen the Ashton  
14 affidavit and you didn't know anything  
15 about it, correct?

16 MR. BERNARDO: Object to the  
17 form of the question.

18 THE WITNESS: Yes, that's  
19 correct.

20 BY MR. PLACITELLA:

21 Q. Okay. So can we go to your  
22 reliance materials on 8B, No. 53.

23 MR. BERNARDO: Object to the  
24 form of the question.

25 BY MR. PLACITELLA:

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1 Q. And actually, in your reliance  
2 materials under tab 53 is the Ashton  
3 affidavit, correct?

4 MR. BERNARDO: Object to the  
5 form of the question.

6 THE WITNESS: That's what it  
7 says here.

8 BY MR. PLACITELLA:

9 Q. Okay. And what Dr. Ashton says  
10 in his affidavit is:

11 "From the 1940s through the  
12 1980s, talc mined in Vermont, and  
13 specifically the talc mined by Engelhard  
14 and its predecessors from the talc mine  
15 located in Johnson, Vermont, (the Johnson  
16 mine), has been considered to be talc-free  
17 from contamination by asbestos."

18 Correct?

19 A. That's what it says.

20 Q. Okay. And in paragraph 8 of  
21 your executive's affidavit, Mr. Ashton, he  
22 talks about attaching the testimony of  
23 Dr. Chidester.

24 Do you see that?

25 A. I see it says that.

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1 Q. It says:

2 "Dr. Chidester stated that he  
3 never found veins of chrysotile asbestos in  
4 talc located in Vermont."

5 Do you see that?

6 A. I see that sentence, yes.

7 Q. Okay. And then what one of the  
8 documents that you, Johnson & Johnson,  
9 attached to this affidavit was the  
10 deposition of Dr. Chidester from the  
11 Westfall case, correct?

12 MR. BERNARDO: Object to the  
13 form of the question. Also object to the  
14 use of this document, beyond the scope of  
15 the notice.

16 THE WITNESS: I guess that's  
17 attached. I -- I don't know.

18 BY MR. PLACITELLA:

19 Q. And that's the same case -- the  
20 same docket number as the Hemstock  
21 deposition that you have also attached to  
22 your reliance materials as tab 57, right?

23 MR. BERNARDO: Object to the  
24 form of the question.

25 THE WITNESS: I don't know.

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1 BY MR. PLACITELLA:

2 Q. Well, let's take a look. I  
3 flipped it for you. You see Westfall,  
4 Docket No. 0269?

5 A. Yes, I see it says that.

6 Q. Right. You see the Chidester  
7 deposition, Docket No. 0269 in your  
8 reliance materials?

9 A. Uh-huh, yes.

10 Q. Okay. Now, when you attached  
11 that affidavit -- when you attached that  
12 transcript to the -- to the -- to your  
13 affidavit, I mean, you, Johnson & Johnson,  
14 you knew that Dr. Chidester had told you  
15 privately that he actually found asbestos  
16 in Vermont mines, correct?

17 MR. BERNARDO: Object to the  
18 form of the question, beyond the scope of  
19 the notice.

20 You can answer in your  
21 individual capacity if you can.

22 THE WITNESS: I know nothing  
23 about that, no.

24 BY MR. PLACITELLA:

25 Q. Okay. Well --

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1 MR. PLACITELLA: Can you give  
2 me P-7?

3 BY MR. PLACITELLA:

4 Q. Can you go to your binder P-7,  
5 please?

6 P-7, by the way, was this one  
7 of the reliance documents that you sent to  
8 Dr. Hopkins?

9 MR. BERNARDO: Objection to the  
10 form of the question.

11 THE WITNESS: No. 8A and 8B  
12 were sent to Dr. Hopkins.

13 BY MR. PLACITELLA:

14 Q. Okay. So can we go to tab 25?

15 A. In P-7?

16 Q. Yes, in P-7. You see tab 25 in  
17 P-7 are actually your answers to  
18 interrogatories in the Westfall case?

19 Do you see that?

20 A. Yes, they seem to be.

21 Q. Okay. And if you go to page  
22 5 -- there's a thing that says, "As to AH  
23 Chidester."

24 Do you see that?

25 A. Yes.

MAGNA LEGAL SERVICES

1 Q. And it says, under Q5:

2 "Have you ever found asbestos  
3 present in any testing of minerals taken  
4 from Vermont?"

5 Do you see that?

6 A. I see that question, yes.

7 Q. And he -- and the response from  
8 Dr. Chidester is:

9 "Yes. Asbestos is not found  
10 in -- is not found in a mineral, asbestos  
11 was tested by chemical analysis, x-ray and  
12 differential thermo analysis. The asbestos  
13 found was chrysotile."

14 Correct?

15 MR. BERNARDO: Object to the  
16 form of the question, beyond the scope of  
17 the notice.

18 She can answer in her  
19 individual capacity if she can.

20 THE WITNESS: I see all that  
21 written here.

22 BY MR. PLACITELLA:

23 Q. That statement is directly  
24 contrary to the sworn affidavit of Johnson  
25 & Johnson in the Ashton affidavit saying

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1 asbestos was never found in Vermont,  
2 correct?

3 MR. BERNARDO: Object to the  
4 form of the question.

5 THE WITNESS: I can't answer  
6 because it's taken out of content (sic). I  
7 don't know what came before or after.

8 BY MR. PLACITELLA:

9 Q. Okay. Well, what content (sic)  
10 do you need? These are your answers.

11 MR. BERNARDO: Object to the  
12 form of the question.

13 THE WITNESS: The complete  
14 studies and what he's referring to and --

15 BY MR. PLACITELLA:

16 Q. Well, where are they?

17 A. Well, what was done, when I  
18 talked to Dr. Hopkins, I wanted to make  
19 sure that he was familiar with any  
20 allegations and evidence that had been  
21 brought forth, and so we had conversations  
22 about all this and really renewed my  
23 understanding that there is no asbestos in  
24 the cosmetic talc used in Johnson's Baby  
25 Powder.

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1 Q. Okay. Ma'am, your -- I move to  
2 strike your answer as non-responsive.

3 Let me move further to Section  
4 C, page 9.

5 Do you see that? In your  
6 answers to interrogatories. Do you see  
7 that?

8 A. I see Section C, yes.

9 Q. And you see this goes -- and  
10 it -- these are questions as it relates to  
11 Dr. Frederick Pooley.

12 Do you see that?

13 A. I see that name, yes.

14 Q. He's your expert, right?

15 MR. BERNARDO: Object to the  
16 form of the question.

17 THE WITNESS: I don't know who  
18 he is.

19 BY MR. PLACITELLA:

20 Q. He -- well, you signed lots of  
21 interrogatories with his name in it, didn't  
22 you?

23 MR. BERNARDO: Object to the  
24 form of the question.

25 THE WITNESS: I did not sign

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1 interrogatories with his name.

2 BY MR. PLACITELLA:

3 Q. You're sure?

4 A. I don't remember doing that.

5 Q. Okay. You don't know that he  
6 served as a consulting expert to Johnson &  
7 Johnson in talc cases from the 1980s well  
8 into the 2000s? You didn't know that?

9 MR. BERNARDO: Object to the  
10 form of the question.

11 THE WITNESS: I don't remember  
12 his name specifically, no.

13 BY MR. PLACITELLA:

14 Q. Did you know that he testified  
15 as little as a year ago on behalf of  
16 Johnson & Johnson under oath in -- in  
17 New York?

18 A. He may have. I don't know  
19 that.

20 Q. Okay. Did you -- you see here  
21 where it talks about what he did? It asks  
22 if he ever actually looked at the tissue of  
23 Mr. Westfall as the expert for Johnson &  
24 Johnson?

25 MR. BERNARDO: Object to the  
MAGNA LEGAL SERVICES

1 form of the question.

2 BY MR. PLACITELLA:

3 Q. See here it says:

4 "How many tissue samples were  
5 you" -- "were obtained from the autopsy  
6 specimen for testing?"

7 Do you see that?

8 A. I see that question, yes.

9 Q. And it says:

10 "The tissue specimen from the  
11 left lung included a mixture of lung tissue  
12 and also tumor material."

13 Do you see that?

14 A. I see the sentence, yes.

15 Q. Okay. And in question 5, they  
16 asked you to detail the procedures that  
17 were used in looking at the tissue and what  
18 was found.

19 Do you see that?

20 A. I'm reading it now.

21 Q. And it talks about that they  
22 took a sample and they used x-rays and  
23 cameras and took all kinds of pictures, and  
24 they also used a transmission electron  
25 microscope.

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1 Do you see that?

2 MR. BERNARDO: Object to the  
3 form of the question, beyond the scope of  
4 the notice.

5 The witness can answer in her  
6 individual capacity if she can.

7 THE WITNESS: I see that that's  
8 what they're talking about, yes.

9 BY MR. PLACITELLA:

10 Q. Okay. And on the next page,  
11 they talk about:

12 "The definition of fibrous  
13 particles adopted for the first stage  
14 examination was that of a particle with a  
15 3-to-1 axial ratio."

16 Do you see that?

17 MR. BERNARDO: Object to the  
18 form.

19 THE WITNESS: I see it says  
20 that, yes.

21 BY MR. PLACITELLA:

22 Q. It says:

23 "In total, over 200 fibrous  
24 particles were detected, analyzed and  
25 sized, and the results are shown in Table 1

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1 attached to these answers."

2 Do you see that?

3 A. I see it says that, yes.

4 Q. And it says:

5 "It can be seen in Table 1 that  
6 the asbestos minerals were chrysotile,  
7 amosite, tremolite and crocidolite."

8 Do you see that?

9 A. I see that, yes.

10 Q. And it says:

11 "They were detected in dust" --  
12 "dust extracts with chrysotile being the  
13 most commonly observed fiber, followed by  
14 amosite, while fibers of tremolite and  
15 crocidolite were scarce."

16 Do you see that?

17 MR. BERNARDO: Object to the  
18 form of the question, beyond the scope of  
19 the notice.

20 The witness can answer in her  
21 individual capacity if she can.

22 THE WITNESS: I see these  
23 sentences, yes.

24 BY MR. PLACITELLA:

25 Q. Okay. And if you flip to A-12,  
MAGNA LEGAL SERVICES

1 they asked Dr. Pooley if he ever took any  
2 photographs of what he saw.

3 Do you see that?

4 MR. BERNARDO: Same objection.

5 THE WITNESS: Yes.

6 BY MR. PLACITELLA:

7 Q. And it says -- he asks the  
8 photographs -- the lawyers have the  
9 photographs, right?

10 A. It says they're in the custody  
11 of counsel, yes.

12 Q. Okay. So where are those  
13 photographs today?

14 MR. BERNARDO: Object to the  
15 form of the question.

16 THE WITNESS: I guess they're  
17 in the custody of counsel.

18 BY MR. PLACITELLA:

19 Q. Okay. And if we flip to the  
20 end, you can see Table 1. You see where it  
21 says:

22 "Number of fibers per gram  
23 times ten to the sixth in dried tissue."

24 Do you see that?

25 MR. BERNARDO: Same objections.

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1 THE WITNESS: I see it says  
2 that, yes.

3 BY MR. PLACITELLA:

4 Q. Right. So in a gram of  
5 Mr. Westfall's tissue, your expert found 29  
6 million chrysotile fibers, right?

7 A. I can't comment on this. I  
8 don't understand any of this. This is not  
9 within my expertise.

10 Q. He also found 9,400,000 talc  
11 fibers, correct, in the lung of  
12 Mr. Westfall?

13 MR. BERNARDO: Same objections.

14 THE WITNESS: Again, I can't  
15 interpret what this table is.

16 BY MR. PLACITELLA:

17 Q. And he also found tremolite in  
18 the lung of Mr. Westfall, correct?

19 A. No, I cannot comment on what  
20 any of this is.

21 Q. Okay. Now, in --

22 MR. PLACITELLA: Give me back  
23 8A and 8B.

24 BY MR. PLACITELLA:

25 Q. When you, Johnson & Johnson,  
MAGNA LEGAL SERVICES

1 signed the affidavit -- when William Ashton  
2 signed the affidavit on behalf of Johnson &  
3 Johnson, he never mentioned the fact that  
4 he was aware, as was your general counsel,  
5 that the scientists in the Westfall case  
6 found chrysotile asbestos in the Johnson  
7 mine, correct? It was never mentioned.

8 MR. BERNARDO: Object to the  
9 form of the question, beyond the scope of  
10 the notice.

11 The witness can answer in her  
12 individual capacity if she knows.

13 THE WITNESS: I can't comment  
14 on that.

15 BY MR. PLACITELLA:

16 Q. Okay. Now, that would be a  
17 non-truth. Do you agree?

18 MR. BERNARDO: Object to the  
19 form of the question. Same objection.

20 BY MR. PLACITELLA:

21 Q. Well, let me ask you the  
22 question this way: Do you think that was  
23 an okay thing to do, you, Johnson &  
24 Johnson, to do that, to have -- to sign an  
25 affidavit saying there was no proof, there

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1 was no evidence, when you had the person  
2 signing the affidavit with contrary  
3 information?

4 MR. BERNARDO: Object to the  
5 form of the question, beyond the scope.

6 BY MR. PLACITELLA:

7 Q. Was that okay?

8 A. I can't answer that question.

9 Q. Well, why not? You're Johnson  
10 & Johnson. You're here to talk about what  
11 you did right and what you did wrong.

12 MR. BERNARDO: Object to the  
13 form.

14 BY MR. PLACITELLA:

15 Q. Are you saying that it was okay  
16 or not okay --

17 MR. BERNARDO: Object to the  
18 form of the question.

19 BY MR. PLACITELLA:

20 Q. -- to have your executive sign  
21 this affidavit saying there was no proof  
22 when, in fact, you know there was proof?

23 MR. BERNARDO: Object to the  
24 form of the question.

25 THE WITNESS: I don't know that  
MAGNA LEGAL SERVICES

1     there indeed is proof, and I can't answer  
2     that.

3     BY MR. PLACITELLA:

4             Q.     Well, do I have to show you  
5     anything other than the transcripts that  
6     you didn't attach to your affidavit or the  
7     interrogatory answers that your company  
8     filled out to tell you -- show what the  
9     truth was?

10            MR. BERNARDO:   Object to the  
11     form of the question.

12            THE WITNESS:   The proof is a  
13     scientific proof, and I have had  
14     conversations with the scientists who have  
15     reviewed that, and I'm -- I'm comfortable  
16     with what we have always believed.

17     BY MR. PLACITELLA:

18             Q.     So you talked to scientists who  
19     reviewed the transcripts here and your own  
20     interrogatory answers and they told you  
21     everything you did was fine, is that what  
22     you're saying?

23            MR. BERNARDO:   Object to the  
24     form of the question, beyond the scope of  
25     the notice.

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1 THE WITNESS: That's not what  
2 I'm saying, no.

3 BY MR. PLACITELLA:

4 Q. Okay. Now, you know, right,  
5 you, Johnson & Johnson, know that you used  
6 this affidavit to extricate yourself and  
7 have thousands of cases dismissed that you  
8 were involved in?

9 MR. BERNARDO: Object to --

10 BY MR. PLACITELLA:

11 Q. That was the point, you knew  
12 that, correct?

13 MR. BERNARDO: Object to the  
14 form of the question.

15 Mr. Placitella, you asked her  
16 this line of questioning at the last  
17 deposition and I objected to it, you asked  
18 her this question about an hour ago and she  
19 said she doesn't know, and you asked it  
20 again.

21 I think this is becoming  
22 argumentative and harassing and I do  
23 question whether at a break we ought to ask  
24 Judge Viscomi to discuss this because I  
25 don't think this is appropriate in light of

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1 the testimony that's been given.

2 MR. PLACITELLA: Okay. Please,  
3 don't do that. If you want to make a  
4 speaking objection, dismiss the witness  
5 from the stand. Okay? Let's not do that.

6 BY MR. PLACITELLA:

7 Q. Now, you know, you, Johnson &  
8 Johnson know -- let me just -- can you go  
9 to your 8 -- your tab -- your folder 8B  
10 again? And can you go to tab 58?

11 First of all, before we do  
12 that, I apologize. Can you go to tab 54?  
13 Tab 54 in your reliance materials is a  
14 privilege log of Johnson & Johnson.

15 Do you see that?

16 MR. BERNARDO: Object to the  
17 form of the question.

18 THE WITNESS: I see it says  
19 that, yes.

20 BY MR. PLACITELLA:

21 Q. Okay. And do you see all of  
22 these entries related to Ashton?

23 A. I see what you're highlighting,  
24 yes.

25 Q. And you see that they pre- --

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1 MR. PLACITELLA: Let's do that  
2 after the break.

3 BY MR. PLACITELLA:

4 Q. And now, if you go to your tab  
5 58, please, in your binder? You see this  
6 is a letter from May 17th, 1989?

7 This is in your binder,  
8 correct?

9 MR. BERNARDO: Object to the  
10 form of the question.

11 THE WITNESS: Yes, it's in the  
12 binder.

13 BY MR. PLACITELLA:

14 Q. Okay. And can you see here  
15 that what's sent to these lawyers is the  
16 affidavit of -- your affidavit, your  
17 Johnson & Johnson affidavit, and what's  
18 represented is:

19 "The unequivocal conclusion as  
20 set forth in Ashton affidavit is that the  
21 talc from the Johnson Vermont mine did not  
22 contain asbestos."

23 Do you see that?

24 MR. BERNARDO: Object to the  
25 form of the question, beyond the scope of

MAGNA LEGAL SERVICES

1 the notice.

2 The witness can answer in her  
3 individual capacity if she can.

4 THE WITNESS: I see those  
5 words, yes.

6 BY MR. PLACITELLA:

7 Q. And then what is urged here is  
8 that:

9 "After you review this  
10 affidavit, will you voluntarily agree to  
11 voluntarily dismiss your case?"

12 Do you see that?

13 A. I see it says that, yes.

14 Q. Now, can you go to P-9 again?  
15 Folder P-9.

16 MR. BERNARDO: Chris, when  
17 you're at a breaking point.

18 MR. PLACITELLA: I'm almost  
19 done.

20 MR. BERNARDO: We've been going  
21 for over an hour.

22 MR. PLACITELLA: I'm almost  
23 done.

24 MR. BERNARDO: That's fine.

25 BY MR. PLACITELLA:

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1 Q. P-9 is an -- the first page is  
2 an August 4th, 1992 letter.

3 Do you see that?

4 A. I'm sorry?

5 Q. In your folder -- in your book,  
6 P-9?

7 A. In P-9.

8 Q. Right?

9 A. Where in P-9 is it?

10 Q. The very first -- the flip-side  
11 of the very first page.

12 A. Oh, okay. Yes, I see that.

13 Q. It says:

14 "We recently learned that your  
15 firm voluntarily dismissed Windsor  
16 Mineral," that's you, right, Johnson &  
17 Johnson, Windsor Mineral, right?

18 MR. BERNARDO: Object to the  
19 form of the question, beyond the scope of  
20 the notice.

21 The witness can answer in her  
22 individual capacity if she can.

23 BY MR. PLACITELLA:

24 Q. That's you, right? Windsor  
25 Minerals is you?

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1 A. Yes.

2 Q. Okay.

3 "From the Akron cases some time  
4 ago after reviewing an affidavit supplied  
5 by Windsor."

6 Do you see that?

7 A. It says that, yes.

8 Q. Okay. It says:

9 "No evidence of the presence of  
10 asbestos in Windsor Minerals' product has  
11 ever been revealed by this testing."

12 That's right out of Miller's  
13 affidavit, correct?

14 MR. BERNARDO: Object to the  
15 form of the question. Same objections with  
16 respect to scope.

17 BY MR. PLACITELLA:

18 Q. Right out of your president's  
19 affidavit?

20 A. I can't comment on that.

21 Q. Okay. And can you see that the  
22 affidavit is right on the very next page,  
23 ma'am? It's the Faye Miller affidavit that  
24 we went through that was in your other  
25 reliance materials, and the quote is

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1 directly from paragraph 4 of your company's  
2 affidavit:

3 "No evidence of the presence of  
4 asbestos in Windsor Minerals' products has  
5 ever been revealed by this testing."

6 And that's what's quoted in  
7 this letter asking these lawyers to dismiss  
8 their cases; is that right?

9 MR. BERNARDO: Same objection.

10 THE WITNESS: They -- they  
11 attached that, yes.

12 BY MR. PLACITELLA:

13 Q. And do you recall last time we  
14 actually went through and I showed you the  
15 dismissal notices filed in the Miller case  
16 that were -- do you remember us doing that?

17 A. Yes.

18 Q. Okay.

19 MR. PLACITELLA: This is a good  
20 time to break.

21 THE VIDEOGRAPHER: The time is  
22 now 11:32 AM. We are going off the record.

23 (Recess.)

24 THE VIDEOGRAPHER: The time is  
25 now 11:46 AM. We are back on the record.

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1 BY MR. PLACITELLA:

2 Q. Okay. I just have a few more  
3 questions on this then I'm going to move  
4 on.

5 MR. PLACITELLA: Can you give  
6 me the Elmo?

7 BY MR. PLACITELLA:

8 Q. Going back to your affidavit,  
9 when I say you, I mean Johnson & Johnson,  
10 that affidavit was signed by your  
11 Mr. Ashton on May 8th, 1989, correct?

12 A. That appears to be the name and  
13 the date, yes.

14 Q. Okay. And if you go to the  
15 next tab in your reliance materials --

16 A. Would you tell me what tab it  
17 is again, please?

18 Q. Yes, ma'am, 54.

19 MR. BERNARDO: Object to the  
20 form of the question.

21 BY MR. PLACITELLA:

22 Q. 8B-54. That's the log -- your  
23 log. It has an Exhibit No. 69.

24 Do you know what that exhibit  
25 number is from, by the way?

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1           A.     I have no idea, and I don't  
2     even know what a privilege log is.

3           Q.     Okay. Well, you see in your  
4     privilege log on the same date, May 8,  
5     1989.

6                     Do you see that?

7           A.     I see what you're pointing to.

8           Q.     Okay. And you see where it's  
9     from an Ira Dembrow?

10                    Do you see that?

11          A.     I see that name, yes.

12          Q.     To William Ashton.

13                    Do you see that?

14          A.     I see the name, yes.

15          Q.     To John O'Shaughnessy?

16                    Do you see that?

17          A.     Yes.

18          Q.     He's the one of the lawyers who  
19     worked with you in defending the talc  
20     cases, right?

21          A.     Yes, he's one of the lawyers I  
22     worked with.

23          Q.     Bruce Sempel, he was your  
24     medical director?

25          A.     That's correct.

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1 Q. Howard Sloan, who is he?

2 A. I don't know.

3 Q. Okay. And then again on the  
4 same date is another memo between  
5 Mr. Dembrow, Mr. Ashton, your lawyer and  
6 your medical director, correct?

7 A. I see those names listed, yes.

8 Q. Okay. And then there are a  
9 number of other entries leading up to  
10 May 8th.

11 Do you see that?

12 A. I see lots of different dates,  
13 yes.

14 Q. Okay. And then keeping in mind  
15 those names, Dembrow, Sloan. Do you see  
16 that?

17 If you go to your tab --

18 MR. PLACITELLA: What's the tab  
19 number? Hold on.

20 BY MR. PLACITELLA:

21 Q. If you go to your tab No. 58,  
22 this is a letter that attaches the  
23 affidavit.

24 Do you recall that? We just  
25 went through that?

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1 A. We just talked about this, yes.

2 Q. All right.

3 MR. BERNARDO: Same objections  
4 as previously noted.

5 BY MR. PLACITELLA:

6 Q. And you see that Mr. Dembrow  
7 and Mr. Sloan, the people on your privilege  
8 log, are on this letter?

9 A. I saw the name Sloan before. I  
10 don't know about who the other people are.

11 Q. Dembrow? Do you remember I  
12 showed you he --

13 A. Yeah.

14 Q. He corresponded with Mr. Ashton  
15 the day it was signed?

16 A. I see those names, yes.

17 Q. And he was one of the people  
18 who was corresponding with Mr. Ashton along  
19 with Mr. O'Shaughnessy and your medical  
20 director.

21 Do you recall that?

22 A. I saw those names on that log,  
23 but again, I don't know what any of that  
24 means.

25 Q. Okay.

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1 MR. PLACITELLA: So give me my  
2 notes back.

3 BY MR. PLACITELLA:

4 Q. Okay. New subject.

5 Last time we spoke about -- or  
6 you mentioned the Selby case.

7 Do you recall that?

8 Well, before that. Do you  
9 recall last time we went through various  
10 discovery responses that spanned from,  
11 like, 1971 to 1992?

12 Do you recall that?

13 A. I recall I was talking about  
14 different complaints, yes.

15 MR. BERNARDO: Can we go off  
16 the record for a moment?

17 MR. PLACITELLA: Yeah.

18 THE VIDEOGRAPHER: The time  
19 is --

20 MR. BERNARDO: I just want to  
21 make sure you understand your outline is  
22 being --

23 MR. PLACITELLA: That's okay.  
24 Thank you. Nothing to be hidden here.

25 MR. BERNARDO: I just wanted  
MAGNA LEGAL SERVICES

1 you to know.

2 MR. PLACITELLA: Okay. But

3 thank you.

4 MR. BERNARDO: And me.

5 MR. PLACITELLA: That's fine.

6 Thank you, though.

7 BY MR. PLACITELLA:

8 Q. And we ended up in 1992.

9 Do you recall that?

10 A. I don't remember the specific

11 dates, no.

12 Q. All right. The Faye Miller

13 case was 1992. Do you remember we went

14 through them, the Faye Miller case?

15 A. I remember we now discussed

16 that, yes.

17 Q. Okay. And then the next case I

18 wanted to talk to you about was from 1993

19 and that was the Selby case.

20 Do you recall that?

21 A. Yes.

22 Q. And that's one of the responses

23 that you reviewed, correct?

24 A. Yes.

25 Q. Okay. And --

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1 MR. PLACITELLA: Can you give  
2 the witness 337? I'm going to the Elmo.

3 THE WITNESS: Thank you.

4 BY MR. PLACITELLA:

5 Q. 337 -- 337 are Johnson &  
6 Johnson's answers to interrogatories in the  
7 Selby case.

8 Do you see that?

9 A. Yes.

10 Q. You've seen these before,  
11 correct?

12 A. Yes.

13 Q. Okay. And if you go to the  
14 final page, which is interrogatory answer  
15 No. 36. It says:

16 "Do you have any knowledge of  
17 any tests and/or studies conducted  
18 concerning the health effects of asbestos  
19 on humans."

20 And your response is:

21 "There has been no asbestos in  
22 the product during the time plaintiff  
23 claims to have used it. Accordingly, the  
24 information sought by this interrogatory is  
25 neither relevant to the subject matter of

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1 this action as to JJCPI nor is it  
2 reasonably calculated to lead to  
3 discoverable evidence."

4 Do you see that?

5 A. I see that it says that, yes.

6 Q. Okay. And it says:

7 If plaintiff has evidence that  
8 the product has contained asbestos at any  
9 time that you, Johnson & Johnson, will  
10 reconsider whether you're going to turn  
11 over the information, right?

12 MR. BERNARDO: Object to the  
13 form of the question.

14 THE WITNESS: That's not what  
15 it says.

16 BY MR. PLACITELLA:

17 Q. It says, "Will reconsider this  
18 response."

19 A. Yes.

20 Q. That's what it says, right?

21 A. Yes.

22 Q. And who was Thomas Pulliam?

23 A. I do not know.

24 Q. Okay.

25 MR. PLACITELLA: Can you give  
MAGNA LEGAL SERVICES

1 Ms. Musco J&J-326? Give a copy to Counsel.

2 MR. BERNARDO: Thank you.

3 BY MR. PLACITELLA:

4 Q. J&J-326 is a June 27th, 1995  
5 memo entitled, "CTFA Response to Cancer  
6 Prevention Coalition Citizen's Petition."

7 Did you see that?

8 A. Yes.

9 Q. And on here you're copied?

10 A. Yes.

11 Q. Right? Mr. O'Shaughnessy  
12 copied?

13 A. Yes.

14 Q. Right? Mr. -- Dr. Hopkins is  
15 copied, correct?

16 A. Yes.

17 Q. Do you recall this?

18 A. A long time ago.

19 Q. Okay. Down at the bottom, also  
20 is copied Mr. Ashton, Mr. Chudkowski and A.  
21 Winner.

22 Do you see that?

23 A. Yes.

24 Q. Okay. And who is A. Winner, do  
25 you know?

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1           A.     I don't remember exactly. I  
2     remember the name, but I don't remember --

3           Q.     Okay. These are pretty much  
4     the same people who were working on the  
5     litigation for talc around the same time,  
6     right?

7           A.     These are people who were  
8     involved, yes.

9           Q.     Okay. And in this particular  
10    response, which went to the FDA, correct?

11          A.     Yes.

12          Q.     Okay. In this particular  
13    response you asserted that, again to the  
14    FDA, that there's no evidence of asbestos  
15    in your talc, correct?

16                 MR. BERNARDO: Object to the  
17    form of the question. The question is on  
18    an FDA submissions by the witness who was  
19    not put up for that topic.

20                 She can answer in her  
21    individual capacity if she can.

22                 THE WITNESS: That's what it  
23    says, yes.

24    BY MR. PLACITELLA:

25          Q.     Okay. Now, these were all the  
                  MAGNA LEGAL SERVICES

1 same people that were involved, other than  
2 yourself, in actually defending the Coker  
3 case, correct?

4 A. I don't remember who was  
5 involved specifically in the Coker case.

6 Q. Okay. Now, am I correct  
7 that -- do you know anything about the  
8 Coker case?

9 A. I know that there was a  
10 complaint. I don't remember which one it  
11 was.

12 Q. Okay. Last time when we were  
13 together --

14 MR. PLACITELLA: Give me a  
15 second.

16 BY MR. PLACITELLA:

17 Q. I asked you about the Coker  
18 case. I said:

19 "What about the Coker case?"

20 You said it's one of the ones  
21 listed on your notice.

22 I said:

23 "And what do you know about the  
24 Coker case:

25 And your response was:

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1 "The Coker case was (sic)  
2 alleged injury was peritoneal mesothelioma  
3 and it was filed in 1997."

4 Do you recall that?

5 A. I see that, yes.

6 Q. Does that refresh your memory?

7 A. Uh-huh.

8 Q. And it says:

9 "What else do you know about  
10 it?"

11 And you said:

12 "That is all I know about it.

13 "What do you know about the  
14 discovery responses provided in the Coker  
15 case?"

16 And your response was:

17 "I do not know if there were  
18 discovery responses."

19 Do you recall that?

20 A. Yes.

21 Q. Okay. Now, can you look at  
22 your P-9, please? And if you flip about  
23 halfway through P-9, there is an exhibit  
24 entitled J&J-318. See if you can find  
25 that. I put it up here to help you.

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1           A.       Can you give me an idea of  
2   where it is?

3                   MR. PLACITELLA:   Do you want to  
4   find it for her, Jared?

5   BY MR. PLACITELLA:

6           Q.       So in your binder, P-9, is, in  
7   fact, a copy of court and discovery  
8   materials from the Coker file, correct?

9                   MR. BERNARDO:   Object to the  
10   form of the question.

11                  THE WITNESS:   It looks like a  
12   lot of court material.

13   BY MR. PLACITELLA:

14           Q.       Right.   So you did have  
15   material in the Coker case?

16           A.       I'm not seeing any discovery.

17                  MR. BERNARDO:   Object to the  
18   form of the question.

19   BY MR. PLACITELLA:

20           Q.       Okay.   Well, we're going to get  
21   there.

22                   You see there is something in  
23   the file called Deposition Upon Written  
24   Questions in the Coker case?   And I put it  
25   up here on the screen.

MAGNA LEGAL SERVICES

1 MR. BERNARDO: Object to the  
2 form of the question. That's not the  
3 document that's on the screen.

4 MR. PLACITELLA: I'm putting it  
5 up. Let me see if I can help her out.  
6 Wait, hold on.

7 Why don't we do it this way and  
8 we'll come back to try to save some time.

9 BY MR. PLACITELLA:

10 Q. You see that the material here,  
11 there's a lot of material here related to  
12 the Coker case, correct?

13 A. Yeah, I'm seeing a lot of  
14 medical records or requests for them.

15 Q. Right. And I'm going to come  
16 back to that in a minute, but can you go to  
17 your book 8B and go to tab 76, please?

18 In your book at tab 76 is a  
19 letter from Alice Blount, April 23rd, 1998,  
20 to your lawyers.

21 Do you see that?

22 MR. BERNARDO: Object to the  
23 form of the question, beyond the scope.

24 The witness can answer in her  
25 individual capacity with respect to this

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1 document.

2 THE WITNESS: I see that it's a  
3 letter signed by an Alice Blount.

4 BY MR. PLACITELLA:

5 Q. You've seen this letter before,  
6 right?

7 A. Yes.

8 Q. Okay.

9 A. At the last deposition.

10 Q. Right. And in this letter  
11 that -- Alice Blount told you that she had  
12 analyzed Johnson & Johnson's Vermont talc,  
13 right? That's what she told you, right?

14 A. That's what it seems to say,  
15 yes.

16 Q. And it says:

17 "As I told you, I believe that  
18 Johnson & Johnson's Vermont talc contains  
19 trace amounts of asbestos which are well  
20 below those specified by OSHA."

21 Do you see that?

22 A. I see that sentence, yes.

23 Q. Okay. And so that was part of  
24 the Coker file that was available to you as  
25 part of your review in this case, correct?

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1 MR. BERNARDO: Object to the  
2 form of the question.

3 THE WITNESS: This letter was  
4 part of the files that I sent to  
5 Dr. Hopkins after our first deposition.

6 BY MR. PLACITELLA:

7 Q. Yes, ma'am. And so this letter  
8 was one of the letters that was available  
9 to you in preparing for today's deposition,  
10 correct?

11 A. It was in the binder, yes.

12 Q. Right. And this is about  
13 what -- in essence what your expert was  
14 telling you in the Coker case about what  
15 she found in the baby powder, right?

16 MR. BERNARDO: Object to the  
17 form of the question.

18 THE WITNESS: I see that it's a  
19 letter from her. I don't know anything  
20 else other than that.

21 BY MR. PLACITELLA:

22 Q. Well, you're here -- this is  
23 not about Nancy Musco, whether she knows.  
24 This came from Johnson & Johnson's files.  
25 Johnson & Johnson was certainly aware that

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1 Dr. Alice Blount right here from Rutgers  
2 University told them in the context of the  
3 Coker case she found asbestos in Johnson's  
4 Baby Powder. Johnson & Johnson was  
5 certainly aware of that, correct?

6 MR. BERNARDO: Object to the  
7 form of the question, beyond the scope of  
8 the notice.

9 THE WITNESS: I see that what  
10 she has said in the letter here.

11 BY MR. PLACITELLA:

12 Q. Okay. And --

13 MR. PLACITELLA: Where is my  
14 book. Can you give me 216?

15 MR. BERNARDO: I'll also put an  
16 objection on the record with respect to the  
17 use of this document beyond the scope of  
18 the notice.

19 BY MR. PLACITELLA:

20 Q. In preparing your -- being  
21 prepared for today's deposition to testify  
22 about information that was available to  
23 Johnson & Johnson when responding to  
24 discovery, did you review this file from  
25 the Johnson -- from Johnson & Johnson's

MAGNA LEGAL SERVICES

1 records dated (sic) J&J-216?

2 Did you review this?

3 MR. BERNARDO: Object to the  
4 form of the question.

5 THE WITNESS: I have not seen  
6 this, no.

7 BY MR. PLACITELLA:

8 Q. Okay. So in preparing you for  
9 today's deposition concerning what  
10 information was available to Johnson &  
11 Johnson when preparing responses to  
12 discovery, this document was not provided  
13 to you, correct?

14 MR. BERNARDO: Object to the  
15 form of the question.

16 THE WITNESS: I had not seen  
17 this before, but my understanding was that  
18 I was here to talk about the answers to the  
19 interrogatories.

20 BY MR. PLACITELLA:

21 Q. We're going to get to it.

22 Ma'am, this was not provided to  
23 you, correct?

24 A. No. As I said, I had -- this  
25 is the first I've seen it.

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1 Q. Okay. And if we go to the  
2 second page, you see the paragraph that  
3 talks about reports of patients with  
4 mesothelioma.

5 Do you see that?

6 A. I see that it says that, yes.

7 Q. And then it talks about,  
8 "Mesothelioma can be caused by non-  
9 occupational exposure to mineral fibers is  
10 not in doubt."

11 Do you see that?

12 A. I see the sentences you're  
13 highlighting, yes.

14 Q. And it says:

15 "In addition, communities built  
16 around natural sources of tremolite have  
17 experienced incidents of the disease  
18 through non-occupational exposure."

19 Do you see that?

20 A. I see that sentence, yes.

21 Q. You go on to state:

22 "Mesothelioma may occur after  
23 brief or indirect exposure to asbestos."

24 Do you see that yes?

25 A. Yes, I see these sentences,

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1 yes. I don't know who wrote this.

2 Q. Well, do you have any doubt  
3 that it came from your files and it was  
4 written on behalf or for Johnson & Johnson?

5 A. I don't know that it was.

6 Q. Okay. Then we go to the next  
7 section on talc.

8 By the way, there's no question  
9 it's labeled Coker versus Johnson &  
10 Johnson, right?

11 A. It says that, yes.

12 Q. Okay. So let's go onto the  
13 section about talc, and it says:

14 "However, in several  
15 mesothelioma patients studied, both talc  
16 fibers and tremolite were detected. In  
17 fact, the majority of asbestos bodies  
18 isolated from the lungs of women in the  
19 general population have tremolite or  
20 anthophyllite, and because tremolite and  
21 anthophyllite are known contaminants of  
22 talc, this data suggests that rare cases of  
23 mesothelioma among women with no other  
24 identifiable exposure might be related to  
25 exposure to cosmetic talc."

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1 Did you see that?

2 A. I see it says that, yes.

3 Q. And then underneath that it

4 says:

5 "Environmental factors must be

6 given a mayor consideration in the

7 incidents of mesothelioma."

8 Do you see that?

9 A. I see these sentences, yes.

10 Q. And it talks about one of the

11 environmental factors being talc miners.

12 It says:

13 "Tremolite asbestos is a known

14 contaminant of some deposits of talc."

15 Do you see that?

16 A. I see it says that, yes.

17 Q. And my question to you is:

18 When you were relying upon the experts in

19 verifying answers to interrogatories, was

20 any of this information in this internal

21 Johnson & Johnson memo ever made known to

22 you?

23 A. I was not the one supplying the

24 answers. The appropriate person for that

25 particular issue would be supplying it, and

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1 I do know that our scientists were very  
2 much aware of any data or specifically any  
3 proof and evidence of the issues.

4 Q. Okay. So -- but my question to  
5 you was: When you were verifying the  
6 interrogatories as true and accurate, was  
7 this information shared with you, Nancy  
8 Musco?

9 A. No, it was not my job to be  
10 reviewing these. And frankly, I -- I'm not  
11 an expert at this and I really wouldn't  
12 know how to comment on this.

13 Q. Okay. Now --

14 MR. PLACITELLA: Can you give  
15 me 217?

16 BY MR. PLACITELLA:

17 Q. 217 is a memo from William  
18 Ashton.

19 Do you see that?

20 A. Yes, it says that, yes.

21 Q. Is this the same William Ashton  
22 who executed the affidavit we went through  
23 earlier, correct?

24 A. I would assume so, yes.

25 Q. And he talks about a recent

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1 publication that became important in the  
2 Abraham Coker case alleging dusting powder  
3 contains fibrous talc particles.

4 Do you see that?

5 A. Yes.

6 Q. And he copies Dr. Hopkins.

7 Do you see that?

8 A. Yes.

9 Q. Did you know that Dr. Hopkins  
10 was involved in defending the Coker case?

11 A. I don't know specifically what  
12 cases Dr. Hopkins has been called for.

13 Q. Okay. These were some of the  
14 same people who in the very same year were  
15 part of the citizens petition that we went  
16 through a little bit earlier, the response  
17 to the citizens petition, correct?

18 A. These people worked with  
19 Johnson's Baby Powder and talc, yes.

20 Q. Okay. And who was Lusenac, do  
21 you know?

22 MR. BERNARDO: Object to the  
23 form of the question.

24 THE WITNESS: Lusenac I believe  
25 was a supplier. I don't know exactly.

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1 MR. PLACITELLA: Okay. Can you  
2 give me 219?

3 BY MR. PLACITELLA:

4 Q. 219 is a memo, Ray (sic) Coker  
5 versus Johnson & Johnson.

6 Do you see that?

7 A. That's what it says, yes.

8 Q. And it's from Lusenac to John  
9 O'Shaughnessy at Johnson & Johnson who was  
10 in charge of the talc litigation at this  
11 point in time, correct?

12 A. Yes.

13 Q. And was Lusenac says is:

14 "I'm just coming back from  
15 Italy where I met two scientists are (sic)  
16 preparing documents to help solve your  
17 case."

18 Do you see that?

19 A. I see that sentence, yes.

20 Q. Okay.

21 MR. PLACITELLA: Sorry. Put it  
22 up here.

23 BY MR. PLACITELLA:

24 Q. Do you see that?

25 What information did Lusenac

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1 give you, Johnson & Johnson, to help you  
2 fight the Coker case, if you know?

3 A. I do not know.

4 Q. It talks in here something  
5 about the Rabino -- something about Rabino.

6 Do you know anything about  
7 that?

8 A. No.

9 Q. Okay. Now, in our last  
10 deposition, I asked you specifically  
11 whether you, Johnson & Johnson, ever  
12 refused to turn over asbestos testing data  
13 based upon an assertion of privilege.

14 Do you recall that?

15 A. I recall some conversations  
16 about that, yes.

17 Q. Okay. Let's go to it so we're  
18 on the same page. On page 95 -- blow it  
19 up. I asked you:

20 "Now, in your preparation and  
21 knowledge of Johnson & Johnson, do you have  
22 a record of any information of a single  
23 case where Johnson & Johnson turned over  
24 asbestos testing data prior to 2017?"

25 Mr. Bernardo objects. You

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1 asked for me to repeat it, I do. And then  
2 I go on and I say:

3 "When does your research or  
4 when does Johnson & Johnson maintain is the  
5 first time that it turned over testing data  
6 concerning asbestos in Johnson & Johnson  
7 talc in litigation? When is the first time  
8 that happened?"

9 And you say:

10 "I -- again, it will be  
11 whenever it was requested."

12 And I asked you again:

13 "But from your knowledge, so  
14 you believe the first time it was requested  
15 it was turned over?"

16 And you -- after an objection,  
17 you say:

18 "If there were specific  
19 documents requested, they would have been  
20 if I were talking generally, so I don't  
21 know the answer to this."

22 And then I asked you:

23 "Well, you know, for example  
24 when lawyers in cases involving cancer and  
25 baby powder asked for testing data, Johnson

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1     & Johnson took the position that they  
2     weren't going to turn it over because it  
3     was privileged."

4                     And there's an objection. And  
5     you said:

6                     "I don't know this, no."

7                     And I said:

8                     "Well, that would be wrong,  
9     wouldn't you say?"

10                    And you said:

11                    "I can't comment on that."

12                    Now, in your review of the  
13     materials in relation to the Coker case,  
14     you're aware, are you not, that you  
15     defended the Coker case exactly the same  
16     way that you defended every other case,  
17     which is, it was your position that there  
18     was no evidence of any asbestos in any  
19     Johnson & Johnson Baby Powder or Shower to  
20     Shower, correct?

21                    MR. BERNARDO: Object to the  
22     form of the question.

23                    THE WITNESS: I don't know.

24     You know, I can't comment on the legal  
25     basis for it, but I do know that there is

MAGNA LEGAL SERVICES

1 no asbestos in the cosmetic talc for  
2 Johnson's Baby Powder.

3 BY MR. PLACITELLA:

4 Q. Right. So in the context of  
5 the Coker case, you didn't change your  
6 position from prior cases, your position  
7 still was there was no evidence, correct?

8 A. Correct.

9 MR. BERNARDO: Object to the  
10 form of the question.

11 BY MR. PLACITELLA:

12 Q. Okay. And that's what was  
13 related (sic) to the plaintiffs' lawyers,  
14 correct?

15 A. Yes.

16 Q. Okay. Now, if I go back to  
17 319. I want to make sure I get this right.

18 MR. PLACITELLA: I'm sorry,  
19 give her 319. That's part of the --

20 MR. BERNARDO: I'm sorry? Can  
21 I just see what it is?

22 MR. PLACITELLA: Sure. It was  
23 in the binder.

24 MR. BERNARDO: That's what I  
25 was going to ask.

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1 MR. PLACITELLA: It's in the  
2 binder.

3 BY MR. PLACITELLA:

4 Q. I'm -- I am referring  
5 specifically in -- to the document in the  
6 Coker case that says, "Defendants'  
7 Objections to Plaintiff's Deposition on  
8 Written Questions to the Commission of Nell  
9 McCallum & Associates."

10 Do you see that?

11 A. I see that it says that, yes.

12 Q. And it says:

13 "Comes now Johnson & Johnson  
14 Companies, a defendant in the above  
15 lawsuit, and files this objection to  
16 depositions on written questions to the  
17 Colorado School of Mines Research Institute  
18 and to the Commission of Nell McCallum &  
19 Associates."

20 You've seen testing results in  
21 the binders that you sent to Dr. Hopkins  
22 related to Colorado School of Mines,  
23 correct?

24 A. I believe there were some, yes.

25 Q. Right. And on the next page,

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1 we're looking at --

2 MR. BERNARDO: While you are  
3 looking at -- I'm going to object to the  
4 form of the question.

5 But I'm also going to object --  
6 I'm sorry. I'm not going to object to the  
7 form of the question, I'm going to object  
8 to the use of this document as beyond the  
9 scope of the notice.

10 MR. PLACITELLA: Okay.

11 BY MR. PLACITELLA:

12 Q. On the next page, it -- let's  
13 start with question 3 that you were  
14 objecting to.

15 I'm sorry. Let's look at 4.

16 I'm sorry. It says:

17 "Please state if you found the  
18 presence of asbestos or asbestiform  
19 materials" -- "minerals."

20 Do you see that?

21 A. I see it says that, yes.

22 Q. And you -- and Johnson &  
23 Johnson's response is, after saying it's  
24 vague and ambiguous and assumes facts not  
25 in evidence:

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1 "Furthermore, the question  
2 requires witness to speculate and provide  
3 an expert opinion that witness is not  
4 qualified to express. Finally, the  
5 information requested from the witness is  
6 subject to proprietary and trade secret  
7 privileges of the defendant."

8 Do you see that?

9 A. Yes, I see that.

10 Q. And then when it asks you to  
11 produce documents, you further state that  
12 the request violates the Texas Rules of  
13 Civil Procedure, and you complain about the  
14 subpoena, and then you say:

15 "Finally, the information  
16 requested from the witness is subject to  
17 propriety" -- "proprietary and trade secret  
18 privileges of the defendant."

19 Do you see that?

20 A. I see it says that, yes.

21 Q. Okay. And in the same group of  
22 documents, you filed similar objections as  
23 it relates to getting discovery from  
24 McCrone and Associates.

25 Do you see that?

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1 MR. BERNARDO: Object to the  
2 form of the question. Same objection with  
3 respect to the scope of the notice.

4 THE WITNESS: I see it says  
5 that.

6 BY MR. PLACITELLA:

7 Q. Right. And this is in the  
8 Coker case, and you know from your review  
9 of the binders you gave to Dr. Hopkins,  
10 that there is testing information in those  
11 binders related to work that was done by  
12 McCrone and Associates, correct?

13 A. Yes, I believe so.

14 Q. Okay. And Johnson & Johnson's  
15 position in the Coker case as related to  
16 getting information from McCrone and  
17 Associates was that that information was  
18 proprietary and a trade secret according to  
19 your responses, correct?

20 A. That's what the sentence says,  
21 yes.

22 Q. Now, as you sit here, do you  
23 have any evidence that any information  
24 related to McCrone or Colorado School of  
25 Mines was ever turned over to the plaintiff

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1 in the Coker case?

2 A. I don't know what was turned  
3 over.

4 Q. As you sit here, do you have  
5 any evidence to prove that you turned over  
6 any evidence to the plaintiff in the Coker  
7 case related to the testing of asbestos?

8 MR. BERNARDO: Object to the  
9 form of the question.

10 THE WITNESS: I don't know what  
11 was turned over. If it was appropriate to  
12 be turned over, I would assume it would be.

13 BY MR. PLACITELLA:

14 Q. But you don't know?

15 A. No, I do not.

16 Q. So Johnson & Johnson, as it  
17 sits here, does not know what evidence it  
18 turned over in the Coker case?

19 MR. BERNARDO: Object to the  
20 form of the question, beyond the scope of  
21 the notice.

22 The witness can answer in her  
23 individual capacity.

24 THE WITNESS: I don't know.

25 BY MR. PLACITELLA:

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1 Q. Okay. And do you have any  
2 evidence, as you sit here, today that the  
3 information that Alice Blount gave you  
4 during the Coker case was ever turned over  
5 to the plaintiff in that case?

6 MR. BERNARDO: Same objections.

7 THE WITNESS: Again, I do not  
8 know what was turned over.

9 BY MR. PLACITELLA:

10 Q. Does that mean that Johnson &  
11 Johnson does not know or you don't know?

12 A. Since it's not within the scope  
13 of the notice, I can't comment on it and I  
14 don't know.

15 Q. Ma'am, with all due respect, I  
16 move to strike your answer, "It's not  
17 within the scope of the notice." That's  
18 what the judge will decide.

19 My question to you was: Do you  
20 have any evidence, as you sit here today,  
21 that Johnson & Johnson turned over any  
22 evidence concerning asbestos testing to the  
23 plaintiff in the Coker case?

24 A. I do not know what was turned  
25 over and what was not.

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1 Q. Okay. And when you say you do  
2 not know, does that mean you do not know,  
3 Nancy Musco, or Johnson & Johnson does not  
4 know?

5 MR. BERNARDO: Object to the  
6 form of the question.

7 THE WITNESS: Since I'm right  
8 now answering for myself, I do not know.

9 BY MR. PLACITELLA:

10 Q. No, ma'am, with all due  
11 respect, you're here answering for Johnson  
12 & Johnson, but somebody else will make that  
13 determination, and I strike -- I move to  
14 strike your response.

15 Now, let's talk about a case,  
16 we spent a couple minutes on it, so I'm not  
17 going to spend a lot of time on it here.  
18 The next case after 1998 -- by the way, do  
19 you know what happened to the Coker case?

20 A. No, I do not.

21 Q. Okay.

22 MR. PLACITELLA: Can you give  
23 me 482?

24 BY MR. PLACITELLA:

25 Q. 482. Marked J&J-482 is an  
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1 article that recently appeared in the  
2 Reuters -- by Reuters entitled, "Johnson &  
3 Johnson knew for decades that asbestos  
4 lurked in its baby powder."

5 Have you ever seen this before?

6 A. Yes, I have.

7 Q. Okay. And when?

8 A. Soon after it came out.

9 Q. Did you ever read it in  
10 preparation for today's deposition?

11 A. No.

12 Q. Okay. I just want to ask you  
13 one question just in terms of information  
14 on the Coker case. I don't want to ask you  
15 about the article itself.

16 MR. BERNARDO: Object to the  
17 question --

18 BY MR. PLACITELLA:

19 Q. In the section --

20 MR. BERNARDO: -- as beyond the  
21 scope of the notice.

22 BY MR. PLACITELLA:

23 Q. Herschel Hobson, who was the  
24 lawyer in the Coker case, is quoted in this  
25 article and he said that he asked Johnson &

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1 Johnson for any research it had into the  
2 health of mine workers, top production  
3 records from the mid-'40s through the '80s,  
4 depositions from managers of three labs  
5 that tested talc for J&J, and any documents  
6 related to testing for fibrous or  
7 asbestiform materials.

8 Do you have any information, as  
9 you sit here today, to say that that is  
10 incorrect?

11 MR. BERNARDO: Object to the  
12 form of the question. Object, beyond the  
13 scope of the notice.

14 THE WITNESS: As I already told  
15 you, I do not know what was or wasn't  
16 handed over.

17 BY MR. PLACITELLA:

18 Q. Okay. And -- sorry, my last  
19 question on this and I'll move on.

20 According to the article  
21 Mr. Hobson said that:

22 "Without the evidence from  
23 Johnson & Johnson and no hope of getting  
24 any, he advised Coker to drop the suit."

25 Do you see that?

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1 MR. BERNARDO: Same objection.

2 THE WITNESS: That's what it  
3 says here.

4 BY MR. PLACITELLA:

5 Q. Do you have any information, as  
6 you sit here today, on behalf of Johnson &  
7 Johnson to rebut that statement by Mr.  
8 Hobson that he dismissed the case because  
9 he just didn't have the proof and Johnson &  
10 Johnson didn't turn anything over?

11 A. Sounds like it would be kind of  
12 a legal conclusion and I can't comment on  
13 that.

14 Q. I'm just saying, do you have  
15 any evidence, as you sit here today, to  
16 disprove what Mr. Hobson is saying here is  
17 that he dropped the case because you didn't  
18 turn any evidence over?

19 MR. BERNARDO: Beyond the scope  
20 of the notice.

21 The witness can answer in her  
22 individual capacity.

23 THE WITNESS: As I said, I  
24 can't comment. I don't know his reasonings  
25 or what he did or didn't do.

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1 BY MR. PLACITELLA:

2 Q. Okay. And now I want to just  
3 talk to you hopefully about something  
4 because we went through this, I just want  
5 to put it in context.

6 You actually certified the  
7 answers to interrogatories in the  
8 Krushinski case, correct?

9 A. That's correct.

10 Q. Okay. And came -- that case  
11 was filed right after the Coker case was  
12 dismissed, correct?

13 A. I don't remember the dates.

14 Q. Okay. Do you remember it was  
15 filed sometime in the late 1990s?

16 A. Again, I would not say for  
17 sure. Whatever --

18 Q. Do you remember that you  
19 certified answers to interrogatories in the  
20 year 2000 in those cases?

21 A. I know I certified them. I  
22 guess that's the date, yes.

23 Q. Right. And --

24 MR. PLACITELLA: Do you have  
25 277?

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1 BY MR. PLACITELLA:

2 Q. Okay. 277, and I think you  
3 have these in your binders, are the answers  
4 to interrogatories that you certified.

5 Do you recognize those?

6 A. Yes.

7 Q. Okay. And specifically -- and  
8 let me just go to the end.

9 This is your signature?

10 A. Yes, it is.

11 Q. Correct? Make sure I got it.

12 And you say:

13 "The foregoing answers are true  
14 and accurate to the best of my knowledge.  
15 I am aware that if any of the foregoing  
16 statements made by me are willfully false,  
17 I may be subject to punishment."

18 Correct?

19 MR. BERNARDO: Object to the  
20 form of the question.

21 THE WITNESS: Yes, that's what  
22 it says.

23 BY MR. PLACITELLA:

24 Q. And I'm not going to go over  
25 all of the things, we asked you about them

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1 the last time, just in context, and answer  
2 to Interrogatory 17, says:

3 "Describe in detail all  
4 processes, procedures and testing performed  
5 upon talc used" -- "the talc used in the  
6 manufacture of Johnson's Baby Powder to  
7 reduce or eliminate the existence of  
8 asbestos, tremolite or other contaminants  
9 in Johnson's Baby Powder."

10 Correct?

11 A. Yes.

12 Q. And what you state specifically  
13 in the beginning of that answer is:

14 "To the best of defendant's  
15 knowledge, talc used in the manufacture of  
16 Johnson & Johnson's Baby Powder never  
17 contained asbestos in any form or  
18 tremolite."

19 Correct?

20 MR. BERNARDO: Object to the  
21 form of the question.

22 THE WITNESS: That's what it  
23 says, yes.

24 BY MR. PLACITELLA:

25 Q. Okay. Now, I forgot to ask you

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1 last time and then I'm going to move off of  
2 these.

3 Did you ever -- before signing  
4 these interrogatories, did you ever  
5 actually read the questions and answers  
6 before signing them?

7 A. Yes, I did.

8 Q. Okay. Now --

9 MR. PLACITELLA: Can you give  
10 me 230?

11 I'll just do this one and maybe  
12 we'll break, Rich?

13 MR. BERNARDO: Sure.

14 MR. PLACITELLA: So you can do  
15 lunch.

16 BY MR. PLACITELLA:

17 Q. 230 is an affidavit filed by  
18 John Hopkins in the Durham case.

19 Do you see this?

20 A. Yes.

21 Q. In preparation and in  
22 discussing -- let's just go to the -- and  
23 you see on the last page, the affidavit is  
24 signed by John Hopkins.

25 Do you see that?

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1 A. Yes.

2 Q. And he concludes saying:

3 "It may be concluded that there  
4 has never been asbestos contamination of  
5 the talc used by Johnson & Johnson in the  
6 United States from the period in question,  
7 1955 to 2002."

8 Correct?

9 A. Yes.

10 Q. And that's essentially what  
11 Roger Miller signed in his affidavits,  
12 correct?

13 MR. BERNARDO: Object to the  
14 form of the question, beyond the scope.

15 The witness may answer in her  
16 individual capacity with respect to the  
17 affidavit.

18 THE WITNESS: Yes, this is the  
19 position that there is no asbestos.

20 BY MR. PLACITELLA:

21 Q. And it's consistent with the  
22 affidavit signed by Mr. Ashton as well,  
23 correct?

24 A. This is the general statement,  
25 yes.

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1 Q. And in preparing for today's  
2 deposition, did Dr. Hopkins ever tell you  
3 that he, himself, certified under oath that  
4 there was no evidence of any asbestos at  
5 any time in Johnson -- in Johnson &  
6 Johnson's cosmetic talc?

7 A. Yes, we did discuss that.

8 Q. Okay.

9 A. And I know that is what is his  
10 understanding.

11 Q. All right. So he told you  
12 about this affidavit?

13 A. Not specifically about the  
14 affidavit, no, but I know that that is his  
15 understanding, but we did not discuss the  
16 specific affidavit.

17 Q. Did he tell you that based upon  
18 this affidavit, the Durham case was  
19 dismissed?

20 MR. BERNARDO: Object to the  
21 form of the question, beyond the scope of  
22 the notice.

23 You can answer in your  
24 individual capacity if you know.

25 THE WITNESS: No, we did not  
MAGNA LEGAL SERVICES

1 discuss that.

2 BY MR. PLACITELLA:

3 Q. Okay. Now -- and then we're  
4 going to break for lunch. I just want to  
5 make sure I kind of -- I have some  
6 questions.

7 Currently there is an appeal  
8 before the New Jersey Appellate Division  
9 related to Johnson & Johnson's Baby Powder  
10 and talc.

11 Do you -- do you know about  
12 that?

13 MR. BERNARDO: Object to the  
14 form of the question.

15 THE WITNESS: I don't know what  
16 specifically there is, no.

17 BY MR. PLACITELLA:

18 Q. Do you know anything about the  
19 appeal?

20 A. No.

21 Q. There's an issue before the  
22 Appellate Division as to when or if Johnson  
23 & Johnson ever told anybody before 2017  
24 that they had testing evidence related to  
25 Johnson & Johnson's talc or cosmetic talc

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1 products. What's the answer? Did you ever  
2 give to any plaintiff in any case prior to  
3 2017 any testing evidence related to the  
4 Johnson & Johnson's Baby Powder or its  
5 sources?

6 MR. BERNARDO: Object to the  
7 form of the question.

8 THE WITNESS: I can't answer  
9 that, no.

10 BY MR. PLACITELLA:

11 Q. Well, you're Johnson & Johnson,  
12 how could you not know?

13 MR. BERNARDO: Objection.

14 BY MR. PLACITELLA:

15 Q. You either did or you didn't.

16 A. If it was requested and it was  
17 appropriate to give the answers and -- or  
18 the evidence, it was given.

19 Q. So you know that for a fact  
20 that's what happened?

21 A. If it was appropriate, yes.

22 Q. So as you sit here today, can  
23 you point to a single case, do you have any  
24 evidence in front of you, can you point to  
25 a single case where you turned over the

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1 evidence of a testing related to Johnson's  
2 Baby Powder before 2017?

3 MR. BERNARDO: Object to the  
4 form of the question.

5 BY MR. PLACITELLA:

6 Q. Can you point to a single  
7 case --

8 MR. BERNARDO: Object.

9 BY MR. PLACITELLA:

10 Q. -- you Johnson & Johnson.

11 MR. BERNARDO: Objection to the  
12 form of the question, beyond the scope of  
13 the notice, and asked and answered multiple  
14 times.

15 You can answer in your  
16 individual capacity if you know.

17 THE WITNESS: No, I cannot.

18 BY MR. PLACITELLA:

19 Q. Okay. So as you sit here  
20 today, Johnson & Johnson, to be clear,  
21 cannot point to a single case prior to 2017  
22 where it turned over evidence related to  
23 the testing of Johnson & Johnson's talc,  
24 baby powder or sources of that baby powder  
25 related to asbestos, correct?

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1 MR. BERNARDO: Same objections.

2 THE WITNESS: No, I cannot.

3 MR. PLACITELLA: Okay. We can  
4 take a break for lunch now. Thank you.

5 THE VIDEOGRAPHER: The time is  
6 now 12:40 PM. We're going off the record.

7 (Lunch recess.)

8 THE VIDEOGRAPHER: The time is  
9 now 1:34 PM. We are back on the record.

10 BY MR. PLACITELLA:

11 Q. Okay. Do you have all of those  
12 binders in front of you? Okay. I'm just  
13 going to approach you for -- just help  
14 organize some of this stuff.

15 So this P-8A, right?

16 A. Correct.

17 Q. And this is P-8B, correct?

18 A. Correct.

19 Q. Okay. This is the evidence you  
20 sent to Dr. Hopkins?

21 A. Correct.

22 Q. Okay. This is evidence,  
23 correct?

24 MR. BERNARDO: Object to the  
25 form of the question.

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1 THE WITNESS: It's not  
2 evidence, it's lots -- just different  
3 documents.

4 BY MR. PLACITELLA:

5 Q. Well, it's evidence we used  
6 today, correct?

7 A. Okay.

8 Q. And there's testing evidence in  
9 here?

10 A. There's some, yes.

11 MR. BERNARDO: Object to the  
12 form of the question.

13 BY MR. PLACITELLA:

14 Q. And this is Musco-2. Do you  
15 remember this from the last time?

16 Okay. This is all the tests,  
17 remember?

18 A. I know it was a big book.

19 Q. All right. Do you want -- do  
20 you want to look through it again to make  
21 sure? This is the testing evidence --

22 A. Uh-huh.

23 Q. -- from Dr. Hopkins'  
24 deposition.

25 Do you recall that?

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1           A.       Okay. Are you trying to block  
2     me?

3           Q.       No. This is the testing  
4     evidence from Dr. Hopkins?

5                   MR. BERNARDO: Object to the  
6     form of the question.

7                   THE WITNESS: It seems to be a  
8     mixture of a lot of things from  
9     Dr. Hopkins.

10    BY MR. PLACITELLA:

11           Q.       Okay. Am I correct that none  
12    of this evidence, to your knowledge, he was  
13    ever turned over to any plaintiff or you  
14    have no evidence that any of this was ever  
15    turned over to any plaintiff before 2017,  
16    correct?

17                   MR. BERNARDO: Object to the  
18    form of the question.

19                   THE WITNESS: I do not know.

20    BY MR. PLACITELLA:

21           Q.       As you sit here today, do you  
22    have any evidence to prove that any of this  
23    was ever turned over to any plaintiff  
24    before 2017?

25                   MR. BERNARDO: Object to the  
                      MAGNA LEGAL SERVICES

1 form of the question.

2 THE WITNESS: I do not know  
3 what was turned over or not turned over.

4 BY MR. PLACITELLA:

5 Q. As you sit here today, do you  
6 have any contemporaneous evidence to prove  
7 that any of this was ever turned over to  
8 any plaintiff before 2017?

9 MR. BERNARDO: Object to the  
10 form of the question, beyond the scope of  
11 the notice.

12 THE WITNESS: I do not know  
13 what was turned over.

14 BY MR. PLACITELLA:

15 Q. So Johnson & Johnson does not  
16 know whether any of this evidence was ever  
17 turned over to any plaintiff before 2017?

18 MR. BERNARDO: Object to the  
19 form of the question, beyond the scope of  
20 the notice.

21 You can answer in your  
22 individual capacity if you can.

23 THE WITNESS: I don't know.  
24 It's not something I had prepared for  
25 within the scope for today.

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1 MR. PLACITELLA: I'll pass the  
2 witness and reserve the right for redirect.

3 MR. BERNARDO: All right.

4 Could we go off the record?

5 THE VIDEOGRAPHER: The time is  
6 now 1:37 PM. We are going off the record.

7 (Discussion held with the  
8 Court.)

9 THE VIDEOGRAPHER: The time is  
10 now 1:44 PM. We are back on the record.

11 - - -

12 E X A M I N A T I O N

13 - - -

14 BY MR. BERNARDO:

15 Q. Good afternoon, Ms. Musco. We  
16 obviously already know each other, but let  
17 me just introduce myself for the record  
18 here.

19 I'm Rich Bernardo, and I'm  
20 going to ask you some questions on behalf  
21 of the Johnson & Johnson defendants.

22 And first, I appreciate you've  
23 been here for now this is the second day  
24 and there's been a passage of some time  
25 between your first day and your second day,

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1 so if I ask you something that you don't  
2 recall, let me know and I can help you  
3 refresh your recollection perhaps with a  
4 transcript or otherwise.

5 A. Okay.

6 Q. First, we didn't really get an  
7 opportunity for you to introduce yourself  
8 to the jury, Ms. Musco. Just if you  
9 wouldn't mind, tell the jury a little about  
10 yourself, where you grew up, where you went  
11 to school?

12 A. Born and raised in New Jersey  
13 so I'm a Jersey girl.

14 I went to college in  
15 Connecticut, University of Bridgeport in  
16 Connecticut.

17 I am a registered nurse. That  
18 is something I always wanted to be ever  
19 since I was a little girl, so my first jobs  
20 all revolved around that from volunteering  
21 to working in the hospital.

22 I went from my clinical  
23 experience taking care of severely burned  
24 patients in St. Barnabas in Livingston. So  
25 I had skin trauma to taking care of healthy

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1 skin when I joined Johnson & Johnson in  
2 1982, and I started out with Johnson's baby  
3 products.

4 Q. Okay.

5 A. And then I had various  
6 positions with Johnson & Johnson for  
7 30 years, and then after that, I am now a  
8 program manager for Dress For Success,  
9 Central New Jersey, it's a nonprofit, where  
10 I teach job development and life skills.

11 MR. PLACITELLA: Move to  
12 strike. Beyond the scope of the  
13 deposition. Move to strike, nonresponsive  
14 to the question.

15 BY MR. BERNARDO:

16 Q. And how long were you a  
17 practicing nurse, Ms. Musco?

18 A. Well, I'm still a practicing  
19 nurse.

20 MR. PLACITELLA: Excuse me.

21 Objection, beyond the scope of  
22 the deposition.

23 She's being here -- produced  
24 here, as you told me, so the record is  
25 clear, as a representative of Johnson &

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1 Johnson and not a practicing nurse for  
2 litigation veracity.

3 You can answer the question  
4 now.

5 THE WITNESS: I have been a  
6 registered nurse since 1975, and my  
7 capacity in my positions both in the  
8 hospital and Johnson & Johnson were that of  
9 a registered nurse.

10 BY MR. BERNARDO:

11 Q. Okay. And -- and why did you  
12 stop nursing practice?

13 A. I never stopped nursing  
14 practice.

15 MR. PLACITELLA: Excuse me,  
16 before you start.

17 Objection, beyond the scope.

18 You can answer now.

19 MR. BERNARDO: And you can have  
20 a continuing objection to all of them if  
21 you chose or you can raise it at each one.  
22 That's fine with me.

23 MR. PLACITELLA: I have to make  
24 sure I articulate it. Thank you.

25 MR. BERNARDO: Okay.

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1 THE WITNESS: I have just  
2 practiced nursing in different capacities.

3 BY MR. BERNARDO:

4 Q. Okay. And I'm sorry, what year  
5 did you go to Johnson & Johnson?

6 A. I started at Johnson & Johnson  
7 in 1982.

8 Q. Okay. And -- and tell me about  
9 your experience at Johnson & Johnson.

10 MR. PLACITELLA: Objection to  
11 the form.

12 You can answer.

13 THE WITNESS: I had many  
14 different positions at Johnson & Johnson.  
15 I enjoyed them all. I was able to work  
16 with many talented, fantastic people. It  
17 was a very positive experience.

18 BY MR. BERNARDO:

19 Q. Let's talk about why you're  
20 here today and why you were testifying a  
21 few weeks ago, which this deposition is the  
22 continuation of.

23 Ms. Musco, what is your  
24 understanding of what this deposition would  
25 be about?

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1 MR. PLACITELLA: Objection to  
2 form.

3 THE WITNESS: My understanding  
4 is that I am here today to talk about the  
5 process of the obtaining the answers and  
6 supplying the answers to specific  
7 interrogatories for cases involving  
8 Johnson's Baby Powder.

9 BY MR. BERNARDO:

10 Q. And where did you get that  
11 understanding?

12 A. Well, it was my interpretation  
13 of the notice and then also working with  
14 Counsel.

15 Q. Okay. Did you do anything to  
16 prepare for your testimony today and the  
17 last day you were here on behalf of Johnson  
18 & Johnson?

19 A. Yes, I definitely did.

20 Q. Can you tell us what you did?

21 A. Well, after reading the notice  
22 and understanding the notice, I first spoke  
23 to the people -- one of the people who was  
24 responsible for doing the searches to  
25 understand the process, understanding

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1 better where the requested information may  
2 be found, did we search everywhere possible  
3 for it, where was there even the  
4 information that was requested, did it even  
5 exist. I did that.

6 I asked to look at some of the  
7 complaint files really just to remind  
8 myself. I wasn't familiar with all the  
9 cases. I wanted to see what the complaints  
10 were.

11 I read different documents. In  
12 particular, the last time I was deposed  
13 there were a number of documents, a lot of  
14 them that Mr. Placitella had presented to  
15 me, that I had not seen before and I wasn't  
16 familiar with, so I did ask that they be  
17 sent to Dr. John Hopkins, who is the expert  
18 on these matters, to make sure that he had  
19 seen them.

20 And then I followed that up and  
21 I had about an hour conversation with  
22 Dr. Hopkins. He went through specific  
23 tests or allegations that had been  
24 presented and explained them to me, not  
25 that I remember them, because a little

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1 highly scientific, but it reassured what  
2 I've always known. So you know, I felt  
3 much more comfortable after that.

4 Q. Let me back up.

5 Ms. Musco, the documents that  
6 you sent or asked to be sent to  
7 Dr. Hopkins, can you identify them for the  
8 record by exhibit number so we're clear  
9 here?

10 A. Oh, yes. That would be  
11 Exhibit 8 -- P-8A and P-8B.

12 Q. Okay. Thank you.

13 And Ms. Musco, did you  
14 personally review each of the documents in  
15 Exhibits 8A and 8B?

16 A. No.

17 Q. Did you -- did you conduct any  
18 review of them?

19 A. I looked at them to see what  
20 they were. There were a lot of things that  
21 I don't understand so I certainly could not  
22 tell you everything that was in there, but  
23 because a lot of them had been brought up,  
24 that's why I asked that they be sent to  
25 Dr. Hopkins because he would be the most

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1 familiar with them.

2 Q. And during the deposition,  
3 Mr. Placitella referred to Exhibit 8A and  
4 8B as reliance materials.

5 Do you agree with that  
6 characterization?

7 MR. PLACITELLA: Objection to  
8 the form of the question.

9 THE WITNESS: I didn't agree  
10 with the word "reliance." They were a  
11 basis, but I did not rely on them for my  
12 responses. As I said, those were the  
13 documents that I asked to be shared with  
14 Dr. Hopkins because I wanted to feel  
15 comfortable that he was familiar with them,  
16 that this was nothing new.

17 BY MR. BERNARDO:

18 Q. Okay. During your deposition,  
19 you discussed the fact that from time to  
20 time you signed or certified or verified, I  
21 think different words were used, responses  
22 to interrogatories.

23 Do you recall that?

24 A. Yes.

25 Q. I'd like to take a step back

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1 and can you explain in your own  
2 understanding what an interrogatory is in  
3 case the jury is not familiar with that  
4 term?

5 A. My understanding is that  
6 interrogatories are questions asked when a  
7 complaint has been filed.

8 Q. And do you have an  
9 understanding of the process through which  
10 interrogatory responses that are the  
11 subject of the deposition notice were  
12 prepared?

13 A. Well, yes, I know that -- the  
14 process that we used. I was not always  
15 involved in the process, but if there were  
16 questions that Counsel needed direction who  
17 the best person to speak with was, I would  
18 direct them to that appropriate person.

19 Q. Why -- why were you in  
20 particular involved, if you know,  
21 Ms. Musco?

22 A. I was really involved because  
23 throughout my tenure, I had the opportunity  
24 to work with just about every department in  
25 the company and the different experts that

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1 would be the best ones to answer. So it's  
2 a big company, and I would help make that  
3 process easier and direct Counsel to those  
4 appropriate people.

5 Q. Did you interview the  
6 individuals yourself?

7 A. No.

8 Q. Why not?

9 A. Because it wouldn't make sense,  
10 you know, it was best that they speak  
11 directly to Counsel because I -- I couldn't  
12 relay their message. It was a conversation  
13 that needed to happen between Counsel and  
14 the expert.

15 Q. Why is that?

16 A. Because I knew that the people  
17 that I was choosing were the experts. I --  
18 as I said before, I wasn't just going down  
19 the hall and grabbing somebody, you know,  
20 Hey, can you answer this? I carefully  
21 chose the people that could best answer and  
22 could best supply that answer to Counsel,  
23 and my position was not to interview them.  
24 That wasn't my responsibility.

25 Q. We discussed from time to time

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1 you -- you signed or certified or verified.

2 What does that mean to you to have done

3 that?

4 A. It means that I did read every  
5 answer -- every question, every answer to  
6 help ensure that they had all been  
7 answered, that I had directed Counsel to  
8 the appropriate person.

9 Q. How do you know the individuals  
10 that you identified were providing accurate  
11 information or do you know that?

12 A. Because again, I knew the  
13 people that I was directing Counsel to  
14 speak with. These were people I worked  
15 with again throughout 30 years, and I knew  
16 that they were the appropriate people. I  
17 got to work with them, I got to listen to  
18 them. I'd hear them at internal meetings,  
19 I'd hear them at professional meetings. So  
20 I trusted that they had the complete  
21 answers.

22 Q. I want -- I want to move  
23 forward to the present time as opposed to  
24 talking now -- I think we've been talking  
25 about your time when you were assisting

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1 in -- in providing information or providing  
2 access to individuals for the responses.

3 So when you were preparing for  
4 this deposition, did you do anything to  
5 ascertain the basis of the responses that  
6 you identified that were responsive to the  
7 notice?

8 A. Well, again, you know, the  
9 conversations that I had reviewing them,  
10 the conversations that I had with  
11 Dr. Hopkins to just solidify what I always  
12 knew, that these were the correct  
13 responses.

14 Q. Did -- did you make any efforts  
15 to identify if there were any compilations  
16 of documents linked to these responses?

17 MR. PLACITELLA: Objection to  
18 form.

19 THE WITNESS: Yes, that was  
20 part of my original conversation with one  
21 of the people who was responsible for the  
22 searches. I didn't think there were, but I  
23 wanted to make sure that there was no pile  
24 anywhere that was responsible for each  
25 answer. These were what people did every

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1 day in their work, so it's not like they  
2 opened a drawer and said, you know, Here's  
3 the page that answers that.

4 BY MR. BERNARDO:

5 Q. Let me -- let me take an aside  
6 here for a minute.

7 At the end of your questioning  
8 by Mr. Placitella before I began, he asked  
9 you a number of questions about whether you  
10 have any knowledge of any documents that  
11 were produced or when they were produced.

12 Do you recall those questions?

13 A. Yes, I do.

14 Q. In connection with preparing  
15 for this deposition, did you make any  
16 efforts to determine what documents were  
17 produced by Johnson & Johnson in response  
18 to discovery requests, to document  
19 requests?

20 A. No, I specifically looked at  
21 the notice and stayed within the scope of  
22 the notice. So my understanding of that  
23 was it had to do with the discovery  
24 responses.

25 Q. Go back to, you mentioned you

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1 looked for or asked somebody to look for  
2 documents. Who did you ask, by the way, to  
3 understand if there were documents that  
4 were linked up to these responses?

5 A. Well, the person I spoke to, I  
6 can't right now think of her last name,  
7 it's Pam. As I said, she was one of the  
8 people responsible for the searches, and in  
9 understanding, you know, how she did the  
10 searches, was there anything else, was  
11 there any other file to understand that  
12 better. So that's the person I spoke with.

13 Q. Okay. Mr. Placitella asked you  
14 a number of specific document -- I'm sorry,  
15 specific questions about documents that you  
16 couldn't answer, in particular documents in  
17 binders 8A and 8B.

18 Do you recall that?

19 A. Yes, I do.

20 Q. Why didn't you conduct a  
21 further review of those once you sent them  
22 to Dr. Hopkins?

23 MR. PLACITELLA: Objection,  
24 mischaracterizes her prior testimony.  
25 Object to form.

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1 THE WITNESS: Well, some of  
2 them that he asked I didn't feel were in  
3 the scope because they had to do with  
4 industrial talc, and my understanding was  
5 that the notice had to do with cosmetic  
6 talc and Johnson's Baby Powder and Shower  
7 to Shower.

8 BY MR. BERNARDO:

9 Q. Okay. Also, Mr. Placitella  
10 raised with you a number of affidavits.

11 Do you recall that?

12 A. Yes.

13 Q. Did you review those?

14 A. No, I did not.

15 Q. And why hadn't you reviewed  
16 those?

17 A. For the reason that I just  
18 said, that these had to do with cases with  
19 industrial talc and I didn't believe they  
20 were within the scope.

21 Q. Do you have any understanding  
22 of why only a few sets of responses that  
23 discuss the issue of asbestos and talc were  
24 located?

25 A. No, but my understanding is

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1     that there may not have been -- in the  
2     first place there may not have been  
3     discovery responses, or they may have been  
4     with an outside counsel and we didn't know  
5     where they were. So you know, and I  
6     believe that we had agreed that we weren't  
7     going to search outside counsels, but every  
8     attempt was made to find whatever was  
9     available.

10           Q.     On the first day of your  
11     testimony, Ms. Musco, a number of times you  
12     testified that documents were not available  
13     in one case or another other than the  
14     complaint.

15                     Do you -- do you recall --  
16     first, do you recall that testimony?

17           A.     Yes.

18           Q.     And what -- what did you mean  
19     by that?

20           A.     I meant the spec- -- I mean,  
21     there may have been documents, but the  
22     specific documents that had been requested  
23     in the notice, which were answers to  
24     interrogatories in discovery.

25           Q.     Do you have any knowledge one

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1 way or the other if there were documents  
2 pertaining to those cases other than  
3 whether there were discovery responses or  
4 discovery correspondence?

5 A. The other documents, no.

6 Q. Did you make any efforts to  
7 look for that?

8 A. Other than discovery responses,  
9 no, I did not.

10 Q. Why not?

11 A. Because, again, my  
12 interpretation of the notice was that we  
13 were talking about discovery responses.

14 Q. Okay. And do you have any  
15 knowledge as to whether there were searches  
16 that were done in addition to the searches  
17 of the company files of the cases  
18 specifically cited in the notices to see if  
19 there were discovery responses?

20 MR. PLACITELLA: Object to the  
21 form.

22 THE WITNESS: Could you ask  
23 that again, please?

24 BY MR. BERNARDO:

25 Q. Sure.

MAGNA LEGAL SERVICES

1 MR. PLACITELLA: Do you object,  
2 too?

3 MR. BERNARDO: She objects,  
4 too.

5 MR. PLACITELLA: Okay.

6 BY MR. BERNARDO:

7 Q. Ms. -- Ms. Musco, you testified  
8 during your deposition that searches were  
9 made with respect to the specific cases  
10 listed in the notice.

11 Do you recall that?

12 A. Yes.

13 Q. Okay. Do you have knowledge as  
14 to whether there were searches done for  
15 discovery -- responsive discovery responses  
16 other than with respect to ones in those  
17 cases?

18 MR. PLACITELLA: Objection to  
19 the form.

20 THE WITNESS: No, I do not.

21 BY MR. BERNARDO:

22 Q. Okay. I'm going to switch  
23 gears a little bit.

24 On the first day of your  
25 deposition, Mr. Placitella asked you about

MAGNA LEGAL SERVICES

1 the Johnson mine and whether talc from the  
2 Johnson mine was used in Johnson's Baby  
3 Powder.

4 Do you recall that testimony?

5 A. Yes, I do.

6 Q. And you said you believed it  
7 did.

8 Do you recall that?

9 A. Yes.

10 Q. What did you mean by that?

11 A. Well, now I -- my understanding  
12 at the time was that when Mr. Placitella  
13 said Johnson's mine, I thought he meant the  
14 mines owned by Johnson's under the  
15 Johnson's umbrella, you know, the  
16 numerous -- the different ones that were  
17 owned by Johnson & Johnson or used by  
18 Johnson & Johnson.

19 Q. Are you aware that there's a  
20 mine that's actually called the Johnson  
21 mine?

22 A. I am now.

23 Q. When did you first become aware  
24 that there's a mine called the Johnson  
25 mine?

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1 A. Yesterday.

2 Q. And how did you become aware of  
3 that?

4 A. In discussions with you.

5 MR. PLACITELLA: What?

6 MR. BERNARDO: In discussions  
7 with Counsel.

8 MR. PLACITELLA: Can you mark  
9 that, please?

10 BY MR. BERNARDO:

11 Q. Do you have an understanding of  
12 whether the Johnson mine supplied talc for  
13 Johnson Baby Powder?

14 A. No, I don't. I'm not really  
15 familiar which mine supplied what. I'm not  
16 an expert on the mines, and I think that's  
17 why I just heard Johnson's, you know,  
18 thinking like we say Johnson's Baby Powder,  
19 it's Johnson's mine.

20 Q. And last, Ms. Musco, you talked  
21 about a number of discovery interrogatory  
22 responses, I think there were a couple in  
23 the Selby case and some in the Krushinski  
24 case during your deposition.

25 Do you recall that?

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1 A. Yes.

2 Q. As you sit here today, do you  
3 believe that those responses are truthful  
4 and accurate?

5 A. Yes.

6 MR. BERNARDO: I don't have any  
7 further questions.

8 MR. PLACITELLA: Okay. I'm  
9 going to need five to ten minutes.

10 THE VIDEOGRAPHER: The time is  
11 now 2:02 PM. We are going off the record.

12 (Recess.)

13 THE VIDEOGRAPHER: The time is  
14 now 2:16 PM. We are back on the record.

15 - - -

16 E X A M I N A T I O N

17 - - -

18 BY MR. PLACITELLA:

19 Q. Ma'am, do you have an  
20 understanding of what the penalty of  
21 perjury is in the state of New Jersey?

22 MR. BERNARDO: Object to --

23 BY MR. PLACITELLA:

24 Q. What it is?

25 MR. BERNARDO: Object to the  
MAGNA LEGAL SERVICES

1 form of the question.

2 THE WITNESS: I don't know the  
3 exact punishment, no.

4 BY MR. PLACITELLA:

5 Q. And you, in fact, signed  
6 certifications indicating that you knew  
7 that if you told a non-truth, you were  
8 subject to punishment and could go to jail,  
9 correct?

10 MR. BERNARDO: Object to the  
11 form of the question.

12 THE WITNESS: Yes.

13 BY MR. PLACITELLA:

14 Q. And you knew that when you were  
15 testifying here under oath that if you  
16 perjured yourself, you could be subject to  
17 penalties, correct?

18 A. That's my understanding, yes.

19 Q. Now, do you recall that when we  
20 started this deposition, I was very  
21 specific with you and I asked you questions  
22 about whether you had spoken with anybody,  
23 including your lawyers, and whether, based  
24 on that discussion, you were going to  
25 change your testimony in any way.

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1 Do you recall me asking those  
2 questions?

3 MR. BERNARDO: Object to the  
4 form of the question, mischaracterizes the  
5 question, mischaracterizes the statement.

6 BY MR. PLACITELLA:

7 Q. Do you recall me asking that  
8 question?

9 A. I know you asked me whether I  
10 had conversations, yes.

11 MR. PLACITELLA: Okay. Can you  
12 please, Court -- Madam Court Reporter, read  
13 back the question and answer I asked you to  
14 find in the -- that we started this  
15 deposition with?

16 (Pertinent portion of the  
17 record is read.)

18 BY MR. PLACITELLA:

19 Q. Do you recall giving that  
20 testimony under oath, ma'am --

21 A. That's what I said.

22 Q. -- here on the witness stand in  
23 Middlesex County?

24 A. That's what I said, yes.

25 Q. Okay. I'm going to show you

MAGNA LEGAL SERVICES

1 your testimony from the last time.

2 MR. PLACITELLA: Are you ready?

3 THE VIDEOGRAPHER: There's no  
4 speakers hooked up to it.

5 MR. PLACITELLA: Right. Why  
6 are we getting no sound?

7 THE VIDEOGRAPHER: The time is  
8 now 2:18 PM. We're going off the record.

9 (Recess.)

10 THE VIDEOGRAPHER: The time is  
11 now 2:22 PM. We are back on the record.

12 BY MR. PLACITELLA:

13 Q. This is your testimony from  
14 last time. I want to play it for you.

15 (Audio played.)

16 Okay. That was your testimony  
17 before you had a conversation with your  
18 lawyer and you changed your testimony,  
19 correct?

20 MR. BERNARDO: Object to the  
21 form of the question, and object to not  
22 showing the witness the transcript in which  
23 there is obviously important testimony  
24 right before what you just showed her.

25 BY MR. PLACITELLA:

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1 Q. Ma'am, do you recall giving  
2 that testimony?

3 Here, I'll play it again?

4 (Audio played.)

5 MR. BERNARDO: Same objection.

6 BY MR. PLACITELLA:

7 Q. Do you recall giving that  
8 testimony, ma'am?

9 A. That is my voice there. I also  
10 remember saying that I really don't know  
11 much about the mines at all.

12 Q. Ma'am, do you recall giving --  
13 let me play it again for the record.

14 (Audio played.)

15 MR. BERNARDO: Object to the  
16 continued playing of the testimony in --

17 BY MR. PLACITELLA:

18 Q. Do you recall giving that  
19 testimony, ma'am?

20 MR. BERNARDO: -- that is not  
21 the prior statement.

22 BY MR. PLACITELLA:

23 Q. Do you recall giving that  
24 testimony under oath, ma'am?

25 A. Yes, I -- that's what I said.

MAGNA LEGAL SERVICES

1 Q. Okay. Now --

2 MR. PLACITELLA: Can you give  
3 me J&J-294, please?

4 BY MR. PLACITELLA:

5 Q. I'm going to show you up on the  
6 screen the deposition from your -- the  
7 president of your company, Roger Miller, in  
8 the Westfall case.

9 Do you remember we went through  
10 this the last time and I showed it to you?

11 A. Yes.

12 Q. Okay. And you see on page 16  
13 Mr. Miller is asked about the different  
14 grades of talc that came out of the Johnson  
15 mine.

16 Do you see that?

17 A. I'm reading that now because  
18 this is the first I've seen this.

19 MR. BERNARDO: Object to the  
20 form of the question, beyond the scope of  
21 the notice.

22 You can answer in your  
23 individual capacity.

24 MR. PLACITELLA: Well, it's not  
25 beyond the scope of the conversation you

MAGNA LEGAL SERVICES

1 had with her off the record.

2 MR. BERNARDO: To correct what  
3 was --

4 MR. PLACITELLA: Okay. Don't  
5 even --

6 MR. BERNARDO: -- beyond the  
7 scope of the notice.

8 MR. PLACITELLA: Don't even go  
9 there. Don't even go there, okay? Just  
10 don't go there.

11 THE WITNESS: I see it. You've  
12 highlighted this, yes.

13 BY MR. PLACITELLA:

14 Q. And you see where it says that  
15 one of the grades from the Johnson mine is  
16 the No. 500?

17 Here, I'll blow it up for you.

18 A. I see --

19 Q. "Was given the No. 500, and the  
20 products of the floatation process of the  
21 refining process are the 500 series  
22 products."

23 Do you see that?

24 A. I see it says that, yes.

25 Q. Okay. Now, go to your binder,

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1 8A. 8A-1, the very first document in your  
2 binder that you sent to Dr. Hopkins, the  
3 very first document.

4 Do you see that?

5 A. Yes.

6 Q. Do you have it in front of you?

7 A. Yes.

8 Q. You see where it says  
9 Cosmetics?

10 A. Yes, I do.

11 Q. Okay. You go to the second  
12 page, see where it talks about Emtals for  
13 cosmetics?

14 A. That's what it says, yes.

15 Q. Do you see where it talks about  
16 Emtal 500 for cosmetics coming from the  
17 Vermont -- Johnson, Vermont mine?

18 MR. BERNARDO: Object to the  
19 form of the question, beyond the scope of  
20 the notice.

21 You can answer in your  
22 individual capacity.

23 THE WITNESS: That's what it  
24 says, yes.

25 BY MR. PLACITELLA:

MAGNA LEGAL SERVICES

1 Q. And it also talks about the  
2 Windsor 66 product being used in -- in  
3 cosmetic, too, correct?

4 MR. BERNARDO: Object to the  
5 form of the question.

6 THE WITNESS: I see those  
7 numbers and I see that. I don't know what  
8 any of this means.

9 BY MR. PLACITELLA:

10 Q. Yes, ma'am. And can you tell  
11 me, as you sit here today, everything else  
12 you discussed with your lawyers in  
13 preparation for today's deposition and the  
14 deposition the first time?

15 MR. BERNARDO: Object to the  
16 form of the question, instruct the witness  
17 not to answer. Calls for privileged  
18 communications. We can certainly call  
19 Judge Viscomi if you like.

20 MR. PLACITELLA: I'll file a  
21 motion.

22 BY MR. PLACITELLA:

23 Q. Ma'am, you had conversations  
24 with your lawyers about the substance of  
25 your testimony, correct?

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1 MR. BERNARDO: Object to the  
2 form of the question.

3 THE WITNESS: As I told you  
4 earlier, we discussed my deposition  
5 generally, yes.

6 BY MR. PLACITELLA:

7 Q. Okay. Now -- and just so the  
8 record is clear, and based upon those  
9 discussions with your lawyers, you have  
10 changed your testimony here today?

11 MR. BERNARDO: Object to the  
12 form.

13 BY MR. PLACITELLA:

14 Q. True or false?

15 MR. BERNARDO: Object to the  
16 form of the question.

17 THE WITNESS: False.

18 BY MR. PLACITELLA:

19 Q. You haven't changed your  
20 testimony?

21 A. No.

22 MR. BERNARDO: Objection to  
23 form of the question.

24 MR. PLACITELLA: Okay.

25 BY MR. PLACITELLA:

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1 Q. So let's have the record clear.

2 On the record, tell me everything you  
3 discussed with your lawyers about your  
4 testimony --

5 MR. BERNARDO: Object --

6 BY MR. PLACITELLA:

7 Q. -- that you gave the last time?

8 MR. BERNARDO: Object to the  
9 form of the question and instruct the  
10 witness not to answer. I'm asking that  
11 this stop and that we call in Judge Viscomi  
12 right now. I'm making that request.

13 MR. PLACITELLA: Well, I'm  
14 not -- I'm done. I'm going to file a  
15 motion.

16 MR. BERNARDO: No, no.

17 MR. PLACITELLA: There's no  
18 reason to do it now.

19 MR. BERNARDO: No, no, no.

20 MR. PLACITELLA: No, I'm not  
21 doing it now.

22 MR. BERNARDO: Mr. Placitella,  
23 I'm asking --

24 MR. PLACITELLA: I'm sorry.  
25 It's my -- you can do whatever you want

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1     when I'm done with my questioning. I'm  
2     done.

3                     MR. BERNARDO: That's fine.

4                     MR. PLACITELLA: I'm done.

5     Okay? All right? I'm done with asking the  
6     question. You've directed her not to  
7     answer it and -- and we're going to deal  
8     with it --

9                     MR. BERNARDO: No, we're going  
10    to --

11                    MR. PLACITELLA: -- in a motion  
12    practice. Yes, we are.

13                    MR. BERNARDO: We're going  
14    to --

15                    MR. PLACITELLA: It's my  
16    motion. No, we're not dealing with it now.

17                    MR. BERNARDO: And I'm going to  
18    ask if I'm allowed to redirect the witness,  
19    and I'm planning to do that. And in  
20    connection with that, I'm going to ask for  
21    Judge Viscomi.

22                    And in fact, before I redirect  
23    the witness, I think I'm going to take a  
24    brief break and try to find the judge.

25                    THE VIDEOGRAPHER: The time is  
                      MAGNA LEGAL SERVICES

1 now 2:29 PM.

2 We're going off the record.

3 MR. PLACITELLA: I'm not done.

4 MR. BERNARDO: You just said  
5 you were.

6 MR. PLACITELLA: I'm not done  
7 with my questions. I have a lot more  
8 questions. I'm not done. I'm done with  
9 this line of questioning. You directed her  
10 not to answer and I'll file a motion and  
11 I'm going to keep asking my questions.

12 MR. BERNARDO: I'm going to ask  
13 for Judge Viscomi in any event.

14 (Discussion held with the  
15 Court.)

16 THE VIDEOGRAPHER: The time is  
17 now 2:48 PM. We are back on the record.

18 BY MR. PLACITELLA:

19 Q. Okay. We had a conversation  
20 with the judge so I'm going to ask you this  
21 question: Did you understand it was a  
22 material issue as to whether -- well,  
23 scratch that.

24 When we started the deposition,  
25 do you recall giving the following

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1 testimony, and I'm going to play it out  
2 loud because the video doesn't work, okay?  
3 In terms of scope of the deposition.

4 Do you recall this?

5 (Audio played.)

6 Do you recall giving that  
7 testimony?

8 A. Yes, I do.

9 Q. Okay. Now, you recall from the  
10 affidavits that I showed you from  
11 Mr. Miller where he said under oath that  
12 the cosmetic talc and the industrial talc  
13 came from the same mine.

14 Do you recall that?

15 MR. BERNARDO: Object to the  
16 form of the question.

17 THE WITNESS: I don't recall  
18 that he said that, no.

19 BY MR. PLACITELLA:

20 Q. Okay. We went through this, do  
21 you remember the Edley affidavit from this  
22 morning?

23 MR. PLACITELLA: Can I --

24 THE WITNESS: I remember the  
25 name, yes.

MAGNA LEGAL SERVICES

1 BY MR. PLACITELLA:

2 Q. Do you recall --

3 THE VIDEOGRAPHER: The time is  
4 now 2:51 PM. We're going off the record.

5 BY MR. PLACITELLA:

6 Q. I'll read -- I'll read it while  
7 you're trying to figure it out.

8 The affidavit that's in your  
9 book --

10 MR. BERNARDO: I'm sorry, are  
11 we on the record, Chris?

12 MR. PLACITELLA: Yes.

13 MR. BERNARDO: I thought he  
14 just said we're going off the record.

15 MR. PLACITELLA: I'm trying to  
16 finish this. The judge told me I had an  
17 hour.

18 MR. BERNARDO: I know, Chris.  
19 I'm not trying to be argumentative, but I  
20 thought he said we're off the record. I  
21 thought you wanted to be on the record.

22 THE WITNESS: He did say that.

23 THE VIDEOGRAPHER: The time is  
24 now 2:52 PM. We are back on the record.

25 BY MR. PLACITELLA:

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1           Q.     This is the affidavit from the  
2     president of your company we went through  
3     this morning.

4                     Do you see that?

5           A.     Yes, president of the mine,  
6     yes.

7           Q.     Right.

8                     MR. PLACITELLA:   This is --  
9     BY MR. PLACITELLA:

10          Q.     And in the affidavit,  
11     Mr. Miller states:

12                     "The mining district is  
13     exclusive source of talc for all Johnson's  
14     Baby Powder sold in the United States.  In  
15     addition to supplying the talc for  
16     Johnson's Baby Powder, Windsor Minerals  
17     also sells a portion of its products to  
18     independent industrial users."

19                     Do you see that?

20          A.     Yes, I see that.

21                     MR. BERNARDO:   Objection.

22     BY MR. PLACITELLA:

23          Q.     On the back he says:

24                     "All of the talc mined by  
25     Windsor Minerals, Inc., whether it is

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1 ultimately sold to industrial users or used  
2 in Johnson's Baby Powder, is sampled and  
3 tested for presence of asbestos."

4 Right?

5 A. Yes.

6 Q. Okay. Now, you have binders --  
7 your attorney asked you about binders 8A  
8 and 8B.

9 Do you see them in front of  
10 you?

11 A. Yes.

12 Q. Who selected what was going to  
13 be put in those binders, you or your  
14 lawyers?

15 A. Well, a lot of it was based on  
16 my first deposition with you. I had asked  
17 that those things be sent to Dr. Hopkins so  
18 that I would understand them, and as I  
19 explained earlier, to make sure that he was  
20 well aware of them. So that's really what  
21 a lot of it is.

22 Q. I'm not asking -- who made the  
23 selection, ma'am, as to what was going to  
24 go in those binders?

25 A. My attorneys and myself.

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1 Q. So your lawyers made the  
2 selection with you and that was what was  
3 sent to Dr. Hopkins, correct?

4 MR. BERNARDO: Object to the  
5 form of the question.

6 BY MR. PLACITELLA:

7 Q. Correct?

8 A. This is what was sent, yes.

9 Q. And it did not include all of  
10 the information that was -- is in Musco-2,  
11 does it?

12 A. What's Musco-2?

13 Q. The big fat binder in front of  
14 you. All of that information is not in the  
15 binders you sent to Dr. Hopkins, is it?

16 A. You mean all of this  
17 information?

18 Q. Yes, ma'am.

19 A. I don't believe so. I don't  
20 know.

21 Q. So what happened was your  
22 lawyers determined what was going -- what  
23 you were going to review, they put it in 8A  
24 and 8B, and then you sent that off to  
25 Dr. Hopkins, correct?

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1 MR. BERNARDO: Object to the  
2 form of the question.

3 THE WITNESS: Based -- based on  
4 our understanding of the notice, that  
5 material was sent to Mr. -- Dr. Hopkins.

6 BY MR. PLACITELLA:

7 Q. And that included the very  
8 first document in your binder that talked  
9 about the Johnson mine talc being used in  
10 cosmetic talc, right?

11 MR. BERNARDO: Object to the  
12 form of the question.

13 THE WITNESS: What's in 8A and  
14 8B was sent to Dr. Hopkins.

15 BY MR. PLACITELLA:

16 Q. Right. And it's the very first  
17 document in your binder that talks about  
18 talc from the Johnson mine, we just went  
19 through this, used in cosmetic talc, right?  
20 Very first document.

21 A. That's in here, yes.

22 Q. Okay. And then you called  
23 Dr. Hopkins after you sent the material,  
24 correct?

25 A. Correct.

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1 Q. Okay. And Dr. Hopkins is not a  
2 Johnson & Johnson employee, correct?

3 A. Not at this time, no.

4 Q. And he never worked with you  
5 personally in answering any discovery  
6 related to lawsuits involving talc that you  
7 were involved with, correct?

8 A. Not directly, no.

9 Q. All right. You never had a  
10 single conversation with him about lawsuits  
11 involving talc until Johnson & Johnson  
12 arranged for you to call him in preparation  
13 for this deposition, correct?

14 MR. BERNARDO: Object to the  
15 form of the question.

16 THE WITNESS: We had had  
17 conversations through the course of my  
18 tenure at Johnson & Johnson, but not  
19 directly related to any particular  
20 complaints.

21 BY MR. PLACITELLA:

22 Q. My question was, ma'am: You  
23 never had a conversation with Dr. Hopkins  
24 about any lawsuit whatsoever until such  
25 time that counsel for Johnson & Johnson put

MAGNA LEGAL SERVICES

1 in touch with Dr. Hopkins, correct?

2 MR. BERNARDO: Object to the  
3 form of the question.

4 THE WITNESS: That's correct.

5 BY MR. PLACITELLA:

6 Q. And Dr. Hopkins is not an  
7 employee of Johnson & Johnson, is he?

8 A. Not at this time, no.

9 Q. And what happened was that  
10 Johnson & Johnson then paid Dr. Hopkins to  
11 look at the material that you sent him and  
12 then have a conversation to tell you what  
13 he thinks the material means, correct?

14 MR. BERNARDO: Object to the  
15 form of the question.

16 THE WITNESS: I don't know.  
17 I'm sure he was paid for his time like all  
18 of us, but I -- I don't know anything about  
19 that.

20 BY MR. PLACITELLA:

21 Q. Well, how much was he getting  
22 paid in order to brief you for this  
23 deposition?

24 MR. BERNARDO: Object to the  
25 form of the question.

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1 THE WITNESS: I have no idea.

2 BY MR. PLACITELLA:

3 Q. And as a result of -- as a  
4 result of your conversation, you took down  
5 notes, correct?

6 A. That's correct.

7 Q. Okay.

8 MR. PLACITELLA: Do you have  
9 her notes?

10 MR. BERNARDO: And I'm going to  
11 object for the record. This is not  
12 something new that came up on her direct.  
13 This is something that could have been  
14 asked before and should have been asked  
15 before.

16 Go ahead.

17 MR. PLACITELLA: Okay. Give  
18 the witness a copy of her notes.

19 BY MR. PLACITELLA:

20 Q. Okay. You have in front of you  
21 your notes?

22 A. Yes.

23 Q. Okay. I have them here under  
24 the Elmo.

25 These are your notes, correct?

MAGNA LEGAL SERVICES

1 A. Yes.

2 Q. And they're P-14, correct?

3 A. Yes.

4 Q. And they're taken on Drinker,  
5 Biddle & Reath station -- notepads?

6 A. Yes, they are.

7 Q. So did you take these while you  
8 were at the law firm of Drinker, Biddle &  
9 Reath?

10 A. Yes, I did.

11 Q. And was anybody in the room  
12 with you while you were taking these notes?

13 A. Yes.

14 Q. And who was in the room with  
15 you while you were taking these notes?

16 A. Both my attorneys, Mr. Karp and  
17 Mr. Bernardo.

18 Q. So Mr. Bernardo and Mr. Karp  
19 were in the room while you were speaking to  
20 Dr. Hopkins and he was briefing you on his  
21 perceptions of what was in the documents  
22 you sent him, correct?

23 MR. BERNARDO: Object to form  
24 of the question.

25 THE WITNESS: They were both in  
MAGNA LEGAL SERVICES

1 the room at the other end of the table, but  
2 I was having a conversation with  
3 Dr. Hopkins.

4 BY MR. PLACITELLA:

5 Q. Right. And did your lawyers at  
6 any point in time during your conversation  
7 with Dr. Hopkins provide any additional  
8 information or input?

9 A. No, they did not.

10 Q. So they sat there quietly the  
11 whole time and listened?

12 A. They were talking amongst  
13 themselves.

14 Q. Okay. So did they have any --  
15 did they say anything to Dr. Hopkins?

16 A. No, they did not.

17 Q. Okay. And so -- and the  
18 information you received from Dr. Hopkins  
19 with the lawyers in the room was part of  
20 the basis for the testimony that you've  
21 given in this deposition, correct?

22 MR. BERNARDO: Object to the  
23 form of the question.

24 THE WITNESS: I don't know that  
25 I would call it the basis for the

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1 testimony. I -- the reason that I spoke to  
2 Dr. Hopkins is because I wanted, as I've  
3 said before, to make sure that this was  
4 nothing new, that he had reviewed -- he was  
5 familiar with all the allegations and I  
6 wanted to make sure of that.

7 BY MR. PLACITELLA:

8 Q. Okay. But then you wrote down  
9 notes based on your conversation with  
10 Dr. Hopkins while your lawyer was in the  
11 room and you brought them to the -- to the  
12 deposition to -- if I asked you questions,  
13 you were going to refer to the notes,  
14 right?

15 MR. BERNARDO: Object to the  
16 form of the question.

17 THE WITNESS: No, I was told  
18 that they had to be brought to the  
19 deposition so they're here.

20 BY MR. PLACITELLA:

21 Q. Okay. So whatever is in these  
22 notes is not the basis for anything you had  
23 to say in this deposition?

24 A. I really took notes. I do this  
25 every time I'm on the phone automatically.

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1 It's just to focus myself in the  
2 conversation. So I heard a lot from  
3 Dr. Hopkins, a lot of it was science. As I  
4 said, I'm not the expert in that, so I  
5 couldn't repeat back really what he said.

6 Q. So do you remember what you  
7 said about your notes the last time we were  
8 together?

9 A. Not exactly, no.

10 Q. Okay. And -- well, let's just  
11 look at your notes. Okay? Let's -- so  
12 let's look at your notes where it talks  
13 about No. 6.

14 Do you see that?

15 MR. PLACITELLA: Can you give  
16 me book 6?

17 BY MR. PLACITELLA:

18 Q. You see No. 6?

19 A. Yes.

20 Q. Okay. And what that does is  
21 that refers to Exhibit 6 in tab 5, correct?

22 A. No, I -- this was numbers that  
23 Dr. Hopkins was using on the phone, so  
24 perhaps it was just his way of referring.  
25 I don't know exactly what he was tying it

MAGNA LEGAL SERVICES

1 into. I just wrote it down as he said it.

2 Q. Well, here, I'm looking at it.  
3 Here's 1971, Colorado mine, right? Your  
4 notes. And there's an Exhibit No. 6,  
5 right? Your notes say No. 6, 1971, and you  
6 wrote down Colorado mine, correct?

7 A. As I said, I wrote down what  
8 Dr. Hopkins said, which was No. 6.

9 Q. And then tell me what your  
10 notes say about what Dr. Hopkins said.

11 A. I have, "Colorado mine, trace  
12 tremolite 1971. Ashton, one sample that  
13 Langer found. Several labs. Princeton,  
14 MIT, FDA, Dartmouth all confirmed no  
15 asbestos."

16 Q. Okay. And --

17 MR. PLACITELLA: Sorry.  
18 J&J-65. My fault. I'm sorry. I should  
19 let you know that I -- hold on. It's still  
20 not here. Let's go to 22.

21 BY MR. PLACITELLA:

22 Q. Can you go to your tab 8A-19?

23 MR. BERNARDO: I'm sorry, 8A-  
24 19?

25 MR. PLACITELLA: Uh-huh.

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1 BY MR. PLACITELLA:

2 Q. November 5th, 1975.

3 MR. PLACITELLA: That's what  
4 I'm missing, I'm doing this wrong. I'm  
5 back in sync.

6 BY MR. PLACITELLA:

7 Q. All right. So in your -- in  
8 your notes you have a No. 25, "Don't know  
9 if industrial or cosmetic."

10 Do you see that?

11 A. Yes.

12 Q. And 25 is at 8A-19, correct?

13 A. It says Exhibit 25.

14 Q. Correct? And so I'm clear that  
15 this exhibit under the Elmo, 25,  
16 corresponds to your notes with Dr. Hopkins,  
17 correct?

18 A. As I said earlier, these were  
19 the numbers that Dr. Hopkins gave me, so I  
20 do not know for sure if it's -- that's what  
21 it relates to.

22 Q. Okay. Let's go to -- let's go  
23 to your notes 22. Okay? No. 22 talks  
24 about what? What does that say, 22?

25 A. It says, "Imerys 1976, Vermont.

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1 Don't know what the sample is. Sediment  
2 returned to test tube. No baby powder  
3 talc."

4 Q. Right. And is that your tab  
5 No. 17, Exhibit 22?

6 A. As I said earlier, I don't know  
7 specifically. These numbers were given to  
8 me by Dr. Hopkins.

9 Q. So although -- well, maybe I  
10 can shortcut all this.

11 Although you wrote down notes  
12 based on your conversations with  
13 Dr. Hopkins, you have no idea what exhibits  
14 in the binder you sent him they actually  
15 refer to, correct?

16 A. As I said earlier, these were  
17 his numbers. He specifically talked about  
18 these kind of testing where there were  
19 allegations to make it a little clearer to  
20 me and reassure me, but I can't say for  
21 sure what his numbering system was.

22 Q. Okay. So you don't know what  
23 he was going through having a conversation  
24 with him -- just so we're clear, you have  
25 no idea from looking at anything in 8A or

MAGNA LEGAL SERVICES

1 8B what he was talking about, correct?

2 A. I don't know specifically his  
3 numbering system, but you know, as you have  
4 pointed out, the number, the place, it  
5 seems to it, but it's Dr. Hopkins numbers,  
6 you know, he gave me.

7 Q. Right. But you never connected  
8 the two?

9 A. No.

10 Q. Okay. So all you did was  
11 basically listen to Dr. Hopkins, he gave  
12 you a number, he told you what he thought  
13 about that number and you wrote it down,  
14 correct?

15 A. Yes. I asked for his  
16 interpretation of the different allegations  
17 and that's what he gave me.

18 Q. Okay. But you have no idea,  
19 just so we're clear, what tab in either one  
20 of these binders those notes even refer to,  
21 correct?

22 A. I don't know specifically. He  
23 gave me these numbers, yes.

24 Q. Okay. So we'd have to ask  
25 Dr. Hopkins?

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1 A. Yes.

2 Q. Okay. So did you ever ask  
3 Dr. Hopkins whether the -- by the way,  
4 did -- did -- were your lawyers taking  
5 notes while this was going on?

6 A. I don't think so. As I said,  
7 they were at the other end of the table  
8 talking amongst themselves. They were not  
9 part of the conversation.

10 Q. Okay. And -- okay.

11 MR. PLACITELLA: So give me the  
12 Hopkins chart.

13 BY MR. PLACITELLA:

14 Q. This is a big copy of the  
15 Hopkins chart, J&J-414, Hopkins-28 that was  
16 in your binder.

17 Do you see that?

18 A. Yes.

19 Q. Okay. Will you take the big  
20 copy out? And let's just talk about it.

21 You see -- first of all, can  
22 you look through this chart and you see how  
23 the chart is headed, it's date, exhibit  
24 number, testing entity, author, recipient,  
25 purpose stated, test method, mine, what was

MAGNA LEGAL SERVICES

1 tested, special preparation, what test  
2 revealed, Hopkins comments.

3 Do you see that?

4 A. I see that, yes.

5 MR. BERNARDO: Object to the  
6 form of the question.

7 BY MR. PLACITELLA:

8 Q. And can you tell me -- so for  
9 example, under J&J-257, it talks about  
10 McCrone.

11 Do you see that?

12 A. I see that, yes.

13 Q. And by the way, when you talked  
14 to Dr. Hopkins about this chart, did he  
15 tell you how he created this chart?

16 MR. BERNARDO: Object to the  
17 form of the question.

18 THE WITNESS: I did not talk to  
19 him about this chart. I don't know if he  
20 created it or you created it based on his  
21 comments, so I didn't talk to him  
22 specifically about this.

23 BY MR. PLACITELLA:

24 Q. So where he talks about find --  
25 where the chart talks about chrysotile

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1 being found in Shower to Shower, you don't  
2 know anything about that, correct?

3 MR. BERNARDO: Object to the  
4 form of the question.

5 THE WITNESS: I don't know what  
6 this is referring to here, no.

7 BY MR. PLACITELLA:

8 Q. Okay. So maybe I can get us  
9 out of here early.

10 Am I correct that you don't  
11 have any evidence, as you sit here today,  
12 on behalf of Johnson & Johnson that a  
13 single one of the tests that are set forth  
14 in this chart were ever supplied to any  
15 plaintiff before 2017 as part of discovery,  
16 correct?

17 MR. BERNARDO: Object to the  
18 form of the question.

19 BY MR. PLACITELLA:

20 Q. Take a look at it --

21 MR. BERNARDO: Asked and  
22 answered.

23 BY MR. PLACITELLA:

24 Q. -- 'cause I don't -- I don't  
25 want you -- I don't want you to do it

MAGNA LEGAL SERVICES

1 haphazardly. Take a look at the chart,  
2 please.

3 A. I don't know what was supplied  
4 to the plaintiffs.

5 Q. Please take a look at the  
6 chart.

7 A. I don't have to look at it  
8 because I really do not know what was  
9 supplied to the plaintiff.

10 Q. As you sit here today  
11 testifying on behalf of Johnson & Johnson,  
12 am I correct that you don't have any  
13 evidence that you can show the court that  
14 any of the tests that are set forth in this  
15 chart were ever provided to a single  
16 plaintiff before 2017, correct?

17 MR. BERNARDO: Object to the  
18 form of the question, beyond the scope of  
19 the notice.

20 You can answer in your  
21 individual capacity.

22 THE WITNESS: I don't know  
23 because my understanding was that was not  
24 what I was here to talk about today.

25 BY MR. PLACITELLA:

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1           Q.     Okay. And would you agree that  
2 all of the test results, whether you agree  
3 with them or not, on this chart are  
4 evidence?

5                   MR. BERNARDO: Object to the  
6 form of the question.

7                   THE WITNESS: That's kind of  
8 hard for me to answer because I think of  
9 evidence as proof, but if it was  
10 appropriate for them to be given to the  
11 plaintiffs and discussed, then I would  
12 think they would be.

13 BY MR. PLACITELLA:

14           Q.     But you have no proof to that  
15 effect at all, correct?

16           A.     No, I do not.

17           Q.     All right. And you were the  
18 one that was here produced by Johnson &  
19 Johnson to testify under oath as to what  
20 was in the possession of Johnson & Johnson  
21 and what was turned over to the plaintiffs  
22 as part of discovery? That's the part I  
23 just read you in the first question I asked  
24 you in the deposition, correct?

25                   MR. BERNARDO: Object to the  
MAGNA LEGAL SERVICES

1 form of the question.

2 THE WITNESS: My understanding  
3 that I was here today to discuss the  
4 discovery responses.

5 BY MR. PLACITELLA:

6 Q. Ma'am, do you remember the  
7 first question I asked you and I just  
8 played it for you again, that you are here  
9 to testify about what information was in  
10 possession of Johnson & Johnson and what  
11 was turned over in the course of discovery?

12 Do you recall that?

13 A. The specific discovery  
14 responses.

15 Q. Yes, ma'am. And as you sit  
16 here today, you don't have a single piece  
17 of evidence to indicate that you ever  
18 turned any test over related to the testing  
19 of asbestos in Johnson & Johnson talc to a  
20 single plaintiff, correct?

21 MR. BERNARDO: Object to the  
22 form of the question.

23 THE WITNESS: My understanding  
24 if it was appropriate to be turned over,  
25 that it would have been, but I do not know

MAGNA LEGAL SERVICES

1 what was or was not turned over.

2 BY MR. PLACITELLA:

3 Q. Ma'am, I'm going to ask the  
4 question again: As you sit here today, you  
5 do not have any evidence to prove that you  
6 ever turned over a single test concerning  
7 asbestos and Johnson & Johnson talc to any  
8 plaintiff before 2017, correct?

9 MR. BERNARDO: Object to the  
10 form of the question.

11 THE WITNESS: Again, I do not  
12 know what was turned over or what was not  
13 turned over.

14 BY MR. PLACITELLA:

15 Q. Ma'am, I promise you you'll get  
16 out of here on time. Just please try to  
17 answer my question.

18 MR. BERNARDO: I believe she  
19 has a couple times.

20 BY MR. PLACITELLA:

21 Q. As you sit here today, you do  
22 not have any evidence that any test related  
23 to asbestos and Johnson & Johnson talc was  
24 ever turned over to any plaintiff in any  
25 case before 2017. You have no evidence

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1 with you, do you?

2 MR. BERNARDO: Object to the  
3 form of the question.

4 THE WITNESS: I'm trying to  
5 answer it. I don't know what was or  
6 wasn't. I did not come today prepared to  
7 show you evidence of what was or was not  
8 turned over.

9 BY MR. PLACITELLA:

10 Q. Ma'am, all I'm asking you, as  
11 you sit here today, do you have any  
12 evidence that you turned over a single one  
13 of these tests set forth in Musco-2 or on  
14 this chart to any plaintiff before 2017?  
15 That's my question.

16 A. And my answer is still the  
17 same: I don't know what was or was not  
18 turned over.

19 Q. But, ma'am, you're here on  
20 behalf of Johnson & Johnson as the person  
21 to testify about what was and what was not  
22 turned over. And are you saying that you,  
23 Johnson & Johnson, have no idea what was  
24 turned over or not?

25 MR. BERNARDO: Object to the  
MAGNA LEGAL SERVICES

1 form of the question.

2 THE WITNESS: My understanding  
3 is that I'm here today to discuss the  
4 discovery responses.

5 BY MR. PLACITELLA:

6 Q. Ma'am, yes or no: Do you have  
7 any evidence that you ever turned over a  
8 single test for asbestos in Johnson &  
9 Johnson talc before 2017? Do you have any  
10 evidence whatsoever?

11 MR. BERNARDO: Object to the  
12 form of the question.

13 THE WITNESS: I can't answer  
14 that because I don't know what was handed  
15 over or what was not.

16 I'm trying to be helpful, but  
17 I -- I do not have any knowledge of that  
18 and I was not prepared to discuss that  
19 today.

20 BY MR. PLACITELLA:

21 Q. Okay. Ma'am, in the  
22 interrogatory responses that you signed,  
23 and you said you verified a number of them,  
24 do you have any evidence that when you  
25 signed answers to interrogatories, that you

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1     turned over, you, Johnson & Johnson, any  
2     evidence related to the testing of Johnson  
3     & Johnson talc for asbestos?

4                     MR. BERNARDO: Object to the  
5     form of the question.

6                     THE WITNESS: If it was  
7     requested and it was appropriate to send,  
8     then it would have been sent. So I do not  
9     know if it was sent or not.

10    BY MR. PLACITELLA:

11             Q.     Ma'am, you certified answers to  
12     interrogatories under oath, under penalty  
13     of perjury in numerous cases, did you not?

14             A.     Yes. There were different  
15     ones, yes.

16             Q.     And what I'm asking you is: Do  
17     you have any proof, as you sit here today,  
18     that when you did that, you ever turned  
19     over a single document in conjunction with  
20     those responses related to the testing of  
21     Johnson Baby Powder for asbestos?

22                     MR. BERNARDO: Object to the  
23     form of the question.

24                     THE WITNESS: I don't remember  
25     turning it over. I don't remember what was

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1 turned over. Again, that was not my  
2 responsibilities. I'm not here to discuss  
3 that. I don't know what was turned over or  
4 not.

5 BY MR. PLACITELLA:

6 Q. Ma'am, do you have any  
7 evidence, as you sit here today, that in  
8 any of the discovery responses that you  
9 certified as true and accurate ever turned  
10 over testing evidence related to Johnson &  
11 Johnson Baby Powder for asbestos? It's a  
12 simple yes or no question.

13 MR. BERNARDO: Object to the  
14 form of the question. She's answered it  
15 multiple times.

16 BY MR. PLACITELLA:

17 Q. Do you have any evidence?

18 MR. BERNARDO: And she's  
19 answered why she can't answer it yes or no  
20 as well.

21 MR. PLACITELLA: Please don't  
22 do that. That is not a form objection.  
23 Please don't do that.

24 MR. BERNARDO: Then please  
25 don't harass the witness.

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1 MR. PLACITELLA: Please don't  
2 do that. I'm just trying to get an answer  
3 to my question.

4 THE WITNESS: And I'm really  
5 trying to answer it. I don't believe it's  
6 a yes or no. I don't know one way or the  
7 other.

8 BY MR. PLACITELLA:

9 Q. Okay. So as you sit here  
10 today, Johnson & Johnson does not know  
11 whether, when they were responding to  
12 discovery -- because this is not Nancy  
13 Musco. I'm asking you, Johnson & Johnson,  
14 as you sit here today, Johnson & Johnson  
15 cannot produce any evidence that they ever  
16 turned over a single test concerning  
17 asbestos in Johnson & Johnson talc at any  
18 point in time to any plaintiff, correct?

19 MR. BERNARDO: Object to the  
20 form of the question.

21 THE WITNESS: Again, I can't  
22 answer because my it's understanding today  
23 that I was here to discuss the discovery  
24 interrogatory responses.

25 BY MR. PLACITELLA:

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1           Q.     Yes, 'ma'am, and in conjunction  
2     with the discovery responses, even under  
3     your understanding, no discovery response  
4     ever attached a single test that you  
5     certified, a single test related to testing  
6     of Johnson & Johnson Baby Powder for  
7     asbestos, correct?

8                     MR. BERNARDO:   Object to the  
9     form of the question.

10                    THE WITNESS:   At this point, I  
11     don't even know what the question is.

12     BY MR. PLACITELLA:

13           Q.     Ma'am, when you signed  
14     interrogatories, did you ever attach to any  
15     of the interrogatories that you certified  
16     as true and accurate under oath, did you  
17     ever attach or supply a single test of  
18     Johnson & Johnson talc for asbestos?

19                     Did you ever do it?

20           A.     It wasn't my responsibility to  
21     do that.   The questions were given to the  
22     appropriate person, and if there was an  
23     appropriate response that required testing  
24     to be sent and it felt it was appropriate  
25     to answer and send, it would have been.

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1 Q. Ma'am --

2 A. But I do not know whether they  
3 were sent or not.

4 Q. Ma'am, I'm not asking you,  
5 Nancy Musco, I'm asking you, Johnson &  
6 Johnson.

7 You, Johnson & Johnson, have no  
8 idea whether you ever sent a single test to  
9 any plaintiff concerning testing for  
10 asbestos in Johnson & Johnson talc,  
11 correct?

12 MR. BERNARDO: Object to the  
13 form of the question.

14 BY MR. PLACITELLA:

15 Q. You, Johnson & Johnson. Not  
16 Nancy Musco.

17 MR. BERNARDO: Object to the  
18 form of the question, beyond the scope of  
19 the notice.

20 You can answer it if you can.

21 THE WITNESS: I have -- because  
22 I'm answering as Johnson & Johnson, it's  
23 beyond the scope of what we're here to talk  
24 about --

25 BY MR. PLACITELLA:

MAGNA LEGAL SERVICES

1 Q. Ma'am --

2 A. -- so I do not know.

3 Q. Ma'am, you believe that it was  
4 your determination to figure out what the  
5 scope of this deposition was? You thought  
6 that was your role?

7 A. That was part of my role, yes.

8 Q. Not your lawyers? You didn't  
9 think your lawyers made that determination?  
10 In preparing for this deposition, you made  
11 the determination what the scope of the  
12 deposition notice was.

13 MR. BERNARDO: Object to the  
14 form.

15 BY MR. PLACITELLA:

16 Q. Is that -- is that your  
17 testimony under oath?

18 MR. BERNARDO: Object to the  
19 form of the question.

20 THE WITNESS: We both did.

21 BY MR. PLACITELLA:

22 Q. So you decided what -- you,  
23 based upon this notice -- is this marked by  
24 the way?

25 MS. CALLAHAN: P-2 I believe.

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1 MR. PLACITELLA: Okay.

2 BY MR. PLACITELLA:

3 Q. Based upon P-1 -- P-1 says,  
4 you're the person -- the representative of  
5 Johnson & Johnson with the most knowledge  
6 concerning discovery responses historically  
7 provided by Johnson & Johnson and Windsor  
8 Minerals concerning the asbestos content of  
9 talc, Johnson's Baby Powder, Shower to  
10 Shower sold by Johnson & Johnson, Windsor  
11 Minerals and Eastern Magnesia Talc Company.

12 Do you see that?

13 A. Yes, I do.

14 Q. And you understand that  
15 discovery responses involve more than just  
16 interrogatory answers, correct?

17 A. My understanding is that  
18 they're the direct responses to the  
19 interrogatories in discovery.

20 Q. Ma'am, you understand that  
21 discovery responses are more than answers  
22 to interrogatories, correct?

23 A. My understanding is that these  
24 were direct responses that was requested.

25 Q. Well, you see on the very next

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1 page it actually details information that  
2 you were asked to bring and consider. It  
3 included correspondence related to  
4 discovery, correct?

5 A. For the specific complaints,  
6 yes.

7 Q. Okay. Discovery responses,  
8 ma'am, correct?

9 A. For the specific cases, yes.

10 Q. All right. Affidavits, ma'am?

11 A. Yes.

12 Q. All right. Certifications,  
13 correct?

14 A. Yes.

15 Q. Okay. And just so the record  
16 is clear, although Johnson & Johnson was  
17 involved based upon what we went through  
18 last time in litigation involving baby  
19 powder from 1971 to the present, you only  
20 reviewed two sets of interrogatories in  
21 order to prepare for your deposition,  
22 correct?

23 MR. BERNARDO: Object to the  
24 form of the question.

25 BY MR. PLACITELLA:

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1 Q. That's it?

2 A. My understanding is that I was  
3 to review and respond to discovery  
4 responses and they were not available to me  
5 any other discovery responses.

6 Q. Okay. Ma'am, let me ask the  
7 question again.

8 Although Johnson & Johnson was  
9 involved in litigation based on what we did  
10 from 1971 to the present involving  
11 Johnson's Baby Powder, you only reviewed  
12 two interrogatory responses in preparation  
13 for the -- this deposition, correct?

14 A. That's correct.

15 Q. Okay.

16 MR. BERNARDO: Object to the  
17 form of the question.

18 BY MR. PLACITELLA:

19 Q. And you -- and out of all of  
20 the interrogatory responses that you  
21 certified yourself, you only reviewed one  
22 set of interrogatory responses, correct?

23 MR. BERNARDO: Object to the  
24 form of the question.

25 THE WITNESS: I believe there  
MAGNA LEGAL SERVICES

1 was only one specific one that I did  
2 certify myself.

3 BY MR. PLACITELLA:

4 Q. You told me that you certified  
5 multiple --

6 A. Of the baby powder.

7 Q. Right. I'm sorry, what did you  
8 say?

9 A. Of the baby powder, yes.

10 Q. Right.

11 A. There's one.

12 Q. Right.

13 A. There's one. And there may  
14 have been others throughout the years that  
15 I did.

16 Q. Right. And that --

17 A. But they weren't necessarily  
18 baby powder.

19 Q. You don't have any  
20 recollection?

21 A. No, I don't.

22 Q. Okay. All right. Well, then,  
23 how do you know if they're baby powder or  
24 not?

25 A. Because I know that these were  
MAGNA LEGAL SERVICES

1 the ones that were discussed. I mean,  
2 30 years, there was a lot of products, a  
3 lot of cases.

4 Q. Okay. So let me ask you the  
5 following questions on behalf of Johnson &  
6 Johnson.

7 Did Johnson & Johnson make any  
8 mistakes in how they supplied discovery  
9 responses in lawsuits involving baby powder  
10 from your perspective on behalf of Johnson  
11 & Johnson?

12 MR. BERNARDO: Object to the  
13 form of the question, beyond the scope of  
14 the notice.

15 You can answer in your  
16 individual capacity.

17 THE WITNESS: I don't know what  
18 you mean by mistakes.

19 BY MR. PLACITELLA:

20 Q. Well, did they -- should they  
21 have provided certain information that they  
22 didn't -- did they make any mistakes?

23 MR. BERNARDO: Same objection.

24 BY MR. PLACITELLA:

25 Q. Here's what I'm trying to

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1     avoid, ma'am, to be clear. I don't want to  
2     see your lawyer get up in a -- in a -- in a  
3     trial and say mistakes were made, but they  
4     were innocent mistakes, and so I'm just  
5     asking you: From your -- from the  
6     perspective of Johnson & Johnson, were any  
7     mistakes made in how you responded to  
8     discovery in terms of the information you  
9     supplied related to Johnson's Baby Powder  
10    and testing for asbestos? Were any  
11    mistakes made?

12                   MR. BERNARDO: Object to the  
13    form of the question, beyond the scope of  
14    the notice.

15                   THE WITNESS: I can't answer  
16    that.

17    BY MR. PLACITELLA:

18           Q.     You can't answer it?

19           A.     No.

20           Q.     Okay.

21                   MR. PLACITELLA: Just give me  
22    two minutes to look at my notes.

23                   THE VIDEOGRAPHER: Off the  
24    record?

25                   MR. PLACITELLA: Yeah, you can  
                    MAGNA LEGAL SERVICES

1 go off the record.

2 THE VIDEOGRAPHER: The time is  
3 now 3:29 PM. We are going off the record.

4 (Brief recess.)

5 THE VIDEOGRAPHER: The time is  
6 now 3:31 PM. We are back on the record.

7 BY MR. PLACITELLA:

8 Q. Okay. Do you have 8A-32 in  
9 front of you?

10 A. From where?

11 Q. From your books.

12 A. 8A you said?

13 Q. 8A, No. 32. This is from the  
14 books that you and your counsel selected to  
15 send to Dr. Hopkins, correct?

16 A. This is the book sent to  
17 Dr. Hopkins, yes.

18 Q. Okay. And 8A-32 is entitled,  
19 "What did testing reveal?"

20 Do you see that?

21 A. I see it says that, yes.

22 Q. And over here on the left side  
23 is a date and on the right is a result.

24 Do you see that?

25 A. That's what it says, yes.

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1 Q. And over here it says, for  
2 example, date, 12/4/70, and the result is 5  
3 to 10 percent fibrous talc, tremolite,  
4 actinolite.

5 Do you see that?

6 A. That's what it says, yes.

7 Q. Were these results ever  
8 provided to any plaintiff, to your  
9 knowledge?

10 MR. BERNARDO: Objection to the  
11 form of the question.

12 THE WITNESS: I do not know.

13 BY MR. PLACITELLA:

14 Q. Okay. Next, 7/7/71 under "What  
15 did the testing reveal? Tremolite and  
16 actinolite."

17 Do you see that?

18 A. I see it says that, yes.

19 Q. Okay. The next one, it says,  
20 7/29/71, Johnson & Johnson. Fibrous  
21 minerals, tremolite, actinolite in terms of  
22 what did the testing reveal.

23 Do you see that?

24 A. I see it says that, yes.

25 Q. Do you have any evidence that

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1 this test was turned over to any plaintiff  
2 at any point in time?

3 MR. BERNARDO: Object to the  
4 form of question, beyond the scope of the  
5 notice.

6 You can answer in your  
7 individual capacity if you know.

8 THE WITNESS: I don't know what  
9 this is and what it was from and who wrote  
10 it.

11 BY MR. PLACITELLA:

12 Q. Ma'am, this is in your book  
13 that you sent to Dr. Hopkins, so you and  
14 your lawyers put this together. You must  
15 have thought it was important or you  
16 wouldn't have sent it. So let me ask you  
17 the questions.

18 Let's go to 2/26/73. This  
19 talks about from Colorado to Ashton,  
20 tremolite, actinolite, asbestos-type  
21 materials.

22 Was this test ever sent to any  
23 plaintiff?

24 A. I don't know.

25 Q. Okay. Next is a report -- I'll

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1 skip down.

2 Reference, 4/24/74, McCrone.

3 On the chart What the tests reveal, and it

4 talks about chrysotile, Argonaut.

5 Do you see that?

6 A. I see it says that.

7 Q. Does -- was this test ever

8 supplied to any plaintiff?

9 A. I don't know.

10 Q. Okay. And the next is a --

11 under "What did the test reveal" chart,

12 there is a mention of a report from

13 McCrone.

14 Do you see that? 10/10/74?

15 A. I see it says that, yes.

16 Q. And it says chrysotile fibers.

17 Do you have any evidence that

18 this report was ever supplied to a single

19 plaintiff?

20 MR. BERNARDO: Same objection

21 with respect to this entire document and

22 scope.

23 You may answer.

24 THE WITNESS: I don't know.

25 BY MR. PLACITELLA:

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1 Q. Okay. Next is 2/2/75, entitled  
2 Cyprus. Result: Asbestos mineral  
3 tremolite, possibly chrysotile.

4 Do you have any evidence that  
5 this test result --

6 MR. BERNARDO: Object to the  
7 form --

8 BY MR. PLACITELLA:

9 Q. -- was supplied to any  
10 plaintiff?

11 MR. BERNARDO: Object to the  
12 form of the question.

13 THE WITNESS: I do not know.

14 BY MR. PLACITELLA:

15 Q. Okay. Next is a listing  
16 10/8/65, Miller to McCrone, under Result:  
17 Fibers of asbestos.

18 Do you have any evidence that  
19 the test that was sent from Miller to  
20 McCrone talking about fibers of asbestos  
21 was ever turned over to a single plaintiff?

22 A. I don't know.

23 Q. Okay. Next is 1/15/75 from  
24 McCrone to Zeitz. Under Result: Fibers of  
25 asbestos 10 times.

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1 Do you have any evidence that  
2 this test was ever turned over to a single  
3 plaintiff?

4 A. I --

5 MR. BERNARDO: Same objection.

6 THE WITNESS: I do not know.

7 BY MR. PLACITELLA:

8 Q. Okay. Next is a date, 1/25/77,  
9 Pooley to Roll (ph). Under Result: Fibers  
10 of antigorite.

11 Do you have any evidence that  
12 this test was ever turned over to a single  
13 plaintiff?

14 A. I do not know.

15 Q. Okay. Next -- I'm skipping a  
16 little bit because I was told by the judge  
17 I had to get done by quarter of, so let's  
18 just go from -- to -- skip up to 1978.

19 10/6/78, McCrone to Windsor.

20 Result: Chrysotile fibers.

21 Do you have any evidence that  
22 this test was ever turned over to a single  
23 plaintiff?

24 A. I do not, no.

25 Q. Okay. Next is a -- well, the

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1 next two say mine unknown, so I'm going to  
2 skip those.

3 Then it says 9/1/83, McCrone,  
4 and under Result, it says: Fibers at  
5 Argonaut.

6 Do you know Argonaut was a mine  
7 that was used for Johnson Baby Powder?

8 MR. BERNARDO: Object to the  
9 form of the question.

10 THE WITNESS: As I said  
11 earlier, I am not familiar with all the  
12 names of the mines.

13 BY MR. PLACITELLA:

14 Q. Do you have any evidence that  
15 this test was ever turn over to a single  
16 plaintiff?

17 A. I do not know.

18 Q. Okay. There's another test  
19 here, 11/2/84 from McCrone. Chrysotile  
20 fibers.

21 Do you see that result?

22 A. I see it says that.

23 Q. Is that the same McCrone that  
24 you filed discovery responses saying that  
25 the information that they had was a trade

MAGNA LEGAL SERVICES

1 secret?

2 MR. BERNARDO: Object to the  
3 form of the question.

4 THE WITNESS: I -- again, I  
5 don't know what this is and what it relates  
6 to.

7 BY MR. PLACITELLA:

8 Q. But McCrone, that's the company  
9 that you filed discovery responses in the  
10 Coker case and said that information from  
11 McCrone was a trade secret, right?

12 MR. BERNARDO: Object to the  
13 form of the question.

14 BY MR. PLACITELLA:

15 Q. That's what you said, you  
16 Johnson & Johnson.

17 Do you remember that?

18 A. I don't believe -- I don't know  
19 that that was said.

20 Q. Okay. You don't remember that  
21 document?

22 A. I remember there were  
23 documents. I don't remember what they  
24 said.

25 Q. All right. A few more.

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1 8/22/85, test from McCrone.

2 Result: Chrysotile asbestos.

3 Do you have any evidence that  
4 this test was ever sent to a single  
5 plaintiff?

6 MR. BERNARDO: Object to the  
7 form of the question.

8 THE WITNESS: I do not know.

9 BY MR. PLACITELLA:

10 Q. Okay. And 4/26/86, McCrone to  
11 Miller, chrysotile asbestos. Do you have  
12 any evidence this test was ever sent to a  
13 single plaintiff?

14 A. I do not know.

15 Q. Okay. The next test, 9/8/86,  
16 McCrone to Miller, Windsor Hammonsville,  
17 Goodrock exposed to -- George Goodrock  
18 exposed to fibers.

19 Do you know who that is --

20 A. No.

21 Q. -- who worked for you?

22 Okay. And then the last one,  
23 3/30/1987, tremolite, correct?

24 A. That's what it says.

25 Q. All right. One more question,

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1 ma'am. One more question and I'm done.

2 MR. PLACITELLA: Tab 33 and 34.

3 BY MR. PLACITELLA:

4 Q. All of these tests that we just  
5 went through, ma'am, every one of them  
6 predated the affidavit signed by the  
7 president of your company in July 1987  
8 where you said that there was no testing  
9 evidence ever showing asbestos in any  
10 Johnson & Johnson product, correct?

11 MR. BERNARDO: Object to the  
12 form.

13 BY MR. PLACITELLA:

14 Q. Every one of the tests we just  
15 went through?

16 MR. BERNARDO: Object to the  
17 form of the question, beyond the scope of  
18 the notice.

19 You can answer in your  
20 individual capacity if you know.

21 THE WITNESS: The dates seem to  
22 be before, yes.

23 MR. PLACITELLA: Okay. That's  
24 all the questions I have. Thank you.

25 THE VIDEOGRAPHER: The time is  
MAGNA LEGAL SERVICES

1 now 3:39 PM. This concludes today's  
2 deposition.

3 (Witness excused.)

4 (Deposition concluded at  
5 approximately 3:39 PM.)

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1 CERTIFICATE

2 I, CONSTANCE S. KENT, a Notary  
3 Public and Certified Court Reporter of the  
4 State of New Jersey, do hereby certify that  
5 prior to the commencement of the  
6 examination, NANCY MUSCO, was duly sworn by  
7 me to testify to the truth, the whole truth  
8 and nothing but the truth.

9 I DO FURTHER CERTIFY that the  
10 foregoing is a verbatim transcript of the  
11 testimony as taken stenographically by and  
12 before me at the time, place and on the  
13 date hereinbefore set forth, to the best of  
14 my ability.

15 I DO FURTHER CERTIFY that I am  
16 neither a relative nor employee nor  
17 attorney nor counsel of any of the parties  
18 to this action, and that I am neither a  
19 relative nor employee of such attorney or  
20 counsel, and that I am not financially  
21 interested in the action.

22 Constance S. Kent

23 CONSTANCE S. KENT, CCR, RPR, CRR

Notary Number: 2325233

24 Notary Expiration: 1/13/2020

CCR Number: 30XI00118300

25 Dated: March 13, 2019



1	LAWYER'S NOTES		
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# Exhibit 4

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF RHODE ISLAND  
3

4 \* \* \* \* \*

5 DAVID HOWARD WESTFALL, in his \*  
6 capacity as Administrator of the \*  
7 Estate of Thomas Howard Westfall, \*  
8 and in his capacity as Administrator \*  
9 of the Estate of BETTY P. WESTFALL \*

10 vs. \*

11 WHITTAKER, CLARK & DANIELS, et al \*

C. A. #79-0269

12 \* \* \* \* \*

13 DEPOSITION of ROGER N. MILLER, a witness in the above-  
14 entitled cause, taken on behalf of the Plaintiffs, pursuant to  
15 Notice, before Lynne S. Irons, a Notary Public in and for the  
16 State of Rhode Island, at the offices of Decof & Grimm, One  
17 Smith Hill, Providence, Rhode Island on October 29, 1982 at  
18 1:00 P.M.  
19  
20  
21  
22  
23  
24

**WP** Woods & Irons  
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EXHIBIT

J&J 894

J&J-0129864

JNJ 000064796

A P P E A R A N C E S

For the Plaintiffs.....DECOP & GRIMM  
BY: R. DANIEL PRENTISS, ESQUIRE  
and VINCENT T. CANNON, ESQUIRE

For the Defendant.....HINCKLEY & ALLEN  
(Whittaker, Clark & Daniels) BY: ROBERT W. LOVEGREEN, ESQUIRE

For the Defendant.....NUTTER, McCLENNEN & FISH  
(Windsor) BY: EDWARD P. LEIBENSPERGER,  
ESQUIRE  
and JOSEPH BLUTE, ESQUIRE

For the Defendant.....HANSON, CURRAN & PARKS  
(Metropolitan) BY: DENNIS MCCARTEN, ESQUIRE

For the Defendant .....ROBERTS, CARROLL, FELDSTEIN &  
(Pfeizer) TUCKER  
BY: BERNDT W. ANDERSON, ESQUIRE

For the Defendant .....RICE, DOLAN, KIERNAN & KERSHAW  
(Vermont Talc) BY: JOHN P. DOLAN, ESQUIRE



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J&J-0129868

JNJ 000064800

ROGER N. MILLER

Being duly sworn, deposes and testifies as follows:

DIRECT EXAMINATION BY MR. PRENTISS

Q Mr. Miller, by whom are you employed?

A Windsor Minerals.

Q How long have you been employed by that company?

A Sixteen years.

Q So what would be the year that you began working there?

A 1966.

Q Where were you employed prior to that?

A Buckman Laboratories, Memphis, Tennessee.

Q How long did you work for -- was it Buckman Laboratories?

A Yes.

Q How long did you work there?

A Nine-and-a-half years.

Q What was your job there?

A I was vice-president of manufacturing.

Q What was the nature of the business of Buckman Laboratories?

A They are manufacturers of industrial microorganism  
control chemicals.

Q So you began there approximately 1956?

A I believe that is right, yes, I don't have the exact  
date.

Q Where did you work prior to that, Mr. Miller?



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1 A I worked for the International Talc Company in  
2 Gouverneur, New York.

3 Q What was your capacity with the International Talc Company?

4 A I was chief engineer.

5 Q How long were you employed with that firm?

6 A With that firm and their predecessor firm, two-and-a-  
7 half years, I believe.

8 Q Where, sir, were you employed prior to going to work for  
9 the International Talc Company and/or its predecessor  
10 corporation?

11 A I was employed in the State of Washington for Border-  
12 Lord Mining Company.

13 Q Can you spell the name of that firm?

14 A Border, B-o-r-d-e-r, hyphen Lord, L-o-r-d Mining  
15 Company.

16 Q What part of Washington was that in?

17 A The office was in Seattle.

18 Q Did it have mining operations in the State of Washington?

19 A It had mining operations in the North Cascades.

20 Q What was the product that was mined?

21 A Tungsten.

22 Q How long did you work for that firm?

23 A About one year.

24 Q Where did you work prior to that?



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1 A I was a student.

2 Q Where?

3 A University of Washington, Seattle, Washington.

4 Q What was your area of concentration?

5 A Mining engineering.

6 Q Did you receive a degree?

7 A Yes.

8 Q Bachelor of Science degree?

9 A Yes.

10 Q What year?

11 A I'll say 1952. I'm not certain, 1952.

12 Q Were you raised in the Seattle area?

13 A I was raised in a town called Coeur d'Alene, Idaho.

14 Q When you went to work for the Windsor Minerals Company --  
15 is that the correct name, sir?

16 A Yes, Windsor Minerals, Inc.

17 Q When you went to work for Windsor Minerals, Inc. in 1966,  
18 what was your capacity?

19 A Vice-president of operations.

20 Q What was the business of the Windsor Company at the time  
21 you joined?

22 A They were miners -- their name at that time was  
23 Eastern Magnesia Talc Company. Their business was mining  
24 and processing of talc.



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1 Q Where was it located?

2 A The offices were in South Burlington, Vermont.

3 Q Are you still vice-president of operations of Windsor?

4 A No, sir, I am now president of Windsor.

5 Q When did you become president?

6 A 1969, I believe.

7 Q What were your responsibilities as vice-president of  
8 operations?

9 A I oversaw the operations of the mines and mills and  
10 shipping facility, packaging and shipping facilities.

11 Q Where were the mines located?

12 A The mines were located in Johnson, Vermont and in  
13 Hammondsville, Vermont.

14 Q Was there one mine in each of those locations?

15 A There was one active mine in each of those locations.

16 Q Where is Hammondsville, Vermont in relation to Johnson?


17 A About 105 miles directly south.

18 Q Had the Eastern Magnesia Talc Company operated other mines  
19 besides the Johnson and Hammondsville prior to your joining  
20 the firm?

21 A To my knowledge, they had.

22 Q Where were those located?

23 A In Waterbury, Vermont and at -- not Essex, let me  
24 think a minute, Fayston, F-a-y-s-t-o-n. Can I ask a question?

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1 MR. LEIBENSPERGER: You can ask me a  
2 question. Off the record.

3 (OFF THE RECORD)

4 Q Were there any other mines that were operated by Eastern  
5 Magnesia prior to your joining the firm than Waterbury and  
6 Fayston?

7 MR. LEIBENSPERGER: Going back to what  
8 date?

9 MR. PRENTISS: To the extent of your  
10 knowledge.

11 MR. LEIBENSPERGER: I would object to  
12 anything prior to 1945, or you can say 1940, as not being  
13 relevant to this case.

14 MR. PRENTISS: We'll go from 1940.

15 A To my knowledge, only these properties were operating.

16 Q So your testimony is that to the best of your knowledge,  
17 from 1940 on, the only mines that were operated by  
18 Eastern Magnesia were at Waterbury, Vermont, Fayston,  
19 Vermont, Johnson, Vermont and Hammondsville, Vermont,  
20 is that correct?

21 A Yes.

22 Q As vice-president of operations of Eastern Magnesia, did  
23 you become familiar to some extent with the history of  
24 that firm's operation in the talc business?



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1 MR.. LEIBENSPERGER: Objection to the  
2 form. You can answer.

3 A To some extent.

4 Q Do you know whether Eastern Magnesia, prior to your joining  
5 the firm, had purchased mines from other talc companies  
6 in Vermont?

7 A Can you expand on that question? I'm not sure if you  
8 are using the right language.

9 Q I may well be using incorrect language. Tell me if you  
10 are familiar with a firm called Vermont Mineral Products,  
11 Incorporated.

12 A I have seen records referring to Vermont Mineral  
13 Products.

14 Q Do you know whether that company, Vermont Mineral Products,  
15 Inc. owned a mine at Chester Depot in Vermont?

16 A No, I don't know.


17 Q Do you know whether EMT, and by EMT I mean Eastern Magnesia  
18 Talc Company, EMT purchased any mines from Vermont Mineral  
19 Products, Inc.?

20 MR. DOLAN: Purchased any mines?

21 MR. PRENTISS: Yes.

22 A It's my belief that the Hammondsville mine was  
23 acquired from Vermont Mineral Products, but I don't know  
24 that as a fact.

---

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1 Q Do you have any familiarity at all with a talc mine in  
2 Reading, Vermont?

3 A That almost certainly is the Hammondsville mine.

4 Q Mr. Miller, so that I can be clear on the corporate history,  
5 when you joined Eastern Magnesia Talc Company, was that  
6 firm, to your knowledge, a subsidiary of any other firms?

7 A Yes.

8 Q What firm?

9 A Johnson & Johnson.

10 Q Was it a wholly-owned subsidiary of Johnson & Johnson?

11 A It's my understanding, yes.

12 Q To your knowledge, when did Johnson & Johnson either acquire  
13 or incorporate EMT?

14 MR. LEIBENSPERGER: Objection to the  
15 form. Go ahead.

16 A I believe 1964, but that answer is provided in the  
17 Interrogatories.

18 MR. LEIBENSPERGER: The answer is in  
19 the Interrogatories.

20 Q I have seen that. Is your understanding that Johnson &  
21 Johnson incorporated EMT in 1964?

22 MR. LEIBENSPERGER: His understanding  
23 I'm not so sure is relevant. It is in the Answers to  
24 Interrogatories.



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1 MR. PRENTISS: It's his answer.

2 MR. LEIBENSPERGER: What is? That's  
3 what I'm saying. There is his answer. He has sworn to it  
4 in the Answers to Interrogatories. For example, he says  
5 1964 and his Answer to Interrogatories says 1965, so it  
6 seems to me that the Answer to Interrogatory is there and  
7 there's no reason to inquire of the same question that  
8 you already have. You can obviously inquire further.

9 Q Mr. Miller, was there an Eastern Magnesia Talc Company in  
10 existence prior to Johnson & Johnson acquiring or  
11 incorporating a firm of that name in 1965?

12 A Yes.

13 Q And what was the business of that firm?

14 A To my knowledge, mining and processing mineral talc.

15 Q In your Answer to Interrogatories, you stated that Johnson  
16 & Johnson acquired all of the assets and most of the  
17 liabilities of Eastern Magnesia Talc on September 17, 1965.  
18 To your knowledge, what did the assets of Eastern Magnesia  
19 Talc consist of at that time?

20 A Mining properties, mineral processing plants, a  
21 corporate office; predominantly those.

22 Q What were the liabilities that were assumed or acquired  
23 by Johnson & Johnson in that transaction?

24 A The financial obligations which carry through the

1 transaction and responsibilities and the liabilities  
2 related to the prior operations of the Eastern Magnesia  
3 Talc Company.

4 Q What liabilities were not acquired by Johnson & Johnson?

5 A I don't know.

6 Q When you say in your answer most of the liabilities, did  
7 you have in mind that there were some liabilities that  
8 were excluded from acquisition in that transaction?

9 A No, my answer was intended to convey the fact that I  
10 was not present nor privy to all of the negotiations and  
11 the interactions that took place at that time and I didn't  
12 want to suggest that I was.


13 Q But you do not have any knowledge of any liabilities that  
14 were excluded from acquisition in that purchase transaction  
15 or whatever that transaction was?

16 A No.

17 Q When Johnson & Johnson acquired Eastern Magnesia, you  
18 stated that it acquired its offices as well as its mining  
19 properties. Did it acquire all of the documents and files  
20 and papers that were in that office at the time of the  
21 acquisition?

22 A To my knowledge, yes.

23 Q In the course of answering interrogatories that were pro-  
24 pounded by the Plaintiff to you, you made reference at

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1 different points to records that you reviewed and that you  
2 referred to to formulate your answers. Can you describe  
3 what records Windsor today possesses going back to 1945  
4 for the operations of Eastern Magnesia Talc from 1945 onward?

5 MR. LEIBENSPERGER: I'm going to object  
6 to that question. You have a Rule 34 request that we have  
7 responded to. We have described the records. It is a  
8 vague question and I don't know whether you think that he  
9 will now be able to orally give you an index of what they  
10 have or give you some general concept of what they have,  
11 but I don't think it's a fair question.

12 MR. PRENTISS: Let me withdraw the  
13 question, maybe that's too vague.

14 Q Let's start with sales records. Does Windsor have complete  
15 sales records for EMT going back to 1945?

16 A No.

17 Q To what extent does Windsor have sales records of EMT going  
18 back to 1945?

19 MR. LEIBENSPERGER: Again, I'm going  
20 to object because that answer is in the interrogatories  
21 and is in the documents that are being produced. Now  
22 you are asking him orally to repeat it. If we are going  
23 to take the time for him to look it up to make sure he now  
24 remembers exactly what he put in the interrogatories, we

1 can do that, but I don't think we ought to trip him up  
2 with it.

3 MR. PRENTISS: I'm not trying to trip  
4 him up, I'm trying to, and I can say this on the record.  
5 for your benefit, Mr. Miller, what I'm trying to do is  
6 get from you a general description of the extent to which  
7 you have complete records and the extent to which you have  
8 holes in your records.

9 Q So with regard to my question on sales records, do you have  
10 a complete record for any period of time?

11 A No.

12 Q Not even up to date?


13 MR. LEIBENSPERGER: I object to the form  
14 of the question.

15 A It's my understanding that we are dealing with a  
16 period of time from 1945 to 1967. We have no complete  
17 sales records for any of that period of time for Eastern  
18 Magnesia Talc Company.

19 Q Do you have records that are specific to certain mines for  
20 that period of time?

21 A We have records which allude to the products, to my  
22 knowledge, that came from certain mines, identified those  
23 products by the grade number of the material.

24 Q I guess my question is, how do you know that your records

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1 from 1945 for sales to 1967 are incomplete?

2 MR. LEIBENSPERGER: Objection to the  
3 form of the question.

4 A We were unable to find any of what I believe you  
5 understand to be sales records for that period of time.  
6 At the time Eastern Magnesia Talc Company was sold to  
7 Minerals and Chemicals Phillip, they came with a truck  
8 and we loaded every relevant document they asked for into  
9 the vehicle and they took those away. We made no record  
10 nor list in detail of those materials.

11 Q Let me go back. There was an action that took place in  
12 1967 whereby EMT's northern Vermont operations were sold  
13 to Minerals and Chemicals Phillip Corporation of Maryland,  
14 is that right?

15 A Yes.


16 Q What assets or products did EMT retain of its own? Do you  
17 understand my question?

18 A Well, I understand your question, but EMT ceased to  
19 exist at the time of that transaction.

20 Q Then Windsor, what did Windsor have after it sold the  
21 northern properties and the name EMT, the Minerals and  
22 Chemicals Phillip?

23 A Windsor retained the mineral producing facility at  
24 West Windsor, Vermont, the mill, the Hammondsville mine,

---

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1 certain other properties in southern counties and the  
2 office in South Burlington.

3 Q At the time of that transaction, did Windsor, now Windsor,  
4 transport to the Phillip Corporation all of the records  
5 having to do with northern properties including the  
6 Johnson mine?


7 A No.

8 Q What records were transported to the new corporation, the  
9 Phillip Corporation?

10 A I cannot detail all of them. Looking at what we now  
11 have in hand, I am aware that all the sales records went.  
12 I would expect that the cost records all went because I  
13 found very few of them. By-and-large, the records that  
14 were transferred were those records which they would  
15 require to understand the business, its products and its  
16 success or failure. I'm sorry I'm being general.

17 Q I understand. In your Answers to Interrogatories, you  
18 state in Answer number four that all talc which was sold  
19 by Windsor or its predecessors to Uniroyal and Whittaker,  
20 Clark & Daniels, was mined by EMT prior to 1967 at the  
21 Johnson mine in Johnson, Vermont. On what do you base that  
22 statement?

23 A We have accounts payable cards for U.S. Rubber, which  
24 it's my understanding is now Uniroyal, concerning shipments

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1 of talc to the plant in Providence, Rhode Island in which  
2 grade 40 is the only grade of material. I know that the  
3 products of the Johnson mill had 40 series numbers in the  
4 first installation. That's the basis for my understanding.

5 Q Those are accounts receivable cards?

6 A Accounts payable cards. Aren't they, or are they  
7 receivables?

8 MR. LEIBENSPERGER: They would be sales  
9 of products, right?

10 THE WITNESS: Yes, they are sales.

11 Q Do you have complete records of accounts receivable cards  
12 regarding United States Rubber Company for the period 1945  
13 through 1967?

14 MR. LEIBENSPERGER: Objection.

15 A No.


16 Q How do you know that you don't have complete records of  
17 accounts receivable cards for that period?

18 MR. LEIBENSPERGER: Objection.

19 A In answering the interrogatories, we searched for  
20 records and as the interrogatories disclose, there was a  
21 period of time in which there was no information at all.

22 Q Do you have a copy of your Answers to Interrogatories in  
23 front of you, sir?

24 A Yes.

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1 Q I will refer you to Answer number 17 on page 16.

2 A Yes.

3 Q You show in the Answer at the middle of the page the period  
4 1956 through 1959 where it is stated that there are not  
5 records. Is that the period that you are referring to?

6 A Yes.

7 Q Other than that period of those four years, do you have  
8 complete accounts receivable card records regarding  
9 United States Rubber Company for Windsor or its predecessor  
10 corporations for the period 1945 through 1967?

11 A I don't know.

12 MR. LEIBENSPERGER: You answered my  
13 question. This Answer to Interrogatory stops at 1961 and  
14 you just included 1967 in your answer.

15 MR. PRENTISS: Mr. Miller's earlier  
16 statement was that he understood the inquiry to be between  
17 1945 and 1967.

18 A ...I don't know. We have brought forward the documents  
19 we were able to find. There may well have been other  
20 documents.

21 Q In other words, you have certain accounts receivable cards  
22 that refer to United States Rubber Company plant in  
23 Providence, Rhode Island, is that right?

24 A Yes.

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1 Q Of those that you have, all of them refer to a grade of talc  
2 that you identify as having been produced at the Johnson  
3 mine in Johnson, Vermont, is that correct?

4 A They refer to grade 40 talc, which I believed to have  
5 been consistently numbered with the other products at the  
6 Johnson mill and I therefore assume that grade 40 is part  
7 of the four series products out of the Johnson mine. I  
8 was never present or involved when any grade 40 was ever  
9 produced or sold.

10 Q So you don't know for a fact that the grade 40 talc of that  
11 type was only mined from the Johnson mine, is that correct?

12 MR. LEIBENSPERGER: Objection to the  
13 question.

14 A Right. No, I don't.


15 Q To go to those grades for a moment, Mr. Miller, what does  
16 a grade number connote?

17 MR. LEIBENSPERGER: Objection to the  
18 form.

19 A To my understanding, the grade number connotes the  
20 source, the mill from which the material was produced.

21 Q Was talc mined by EMT milled at the site of the mine?

22 A Yes. Excuse me, at a mill operated in conjunction  
23 with the mine. They are a mile or two apart. They are not  
24 at the mine site.

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1 Q EMT had no central milling facilities that would provide  
2 milling for talc from more than one mine?

3 A No.

4 Q Could you turn to page 25 of your Answers to Interrogatories,  
5 sir. Interrogatory number 29 --

6 MR. LOVEGREEN: What page?

7 MR. PRENTISS: Twenty-five.

8 Q ...Your response number 29 if you describe talc and talc  
9 grades and you relate that talc grades after processing  
10 with a series of numbers in the 40's and at grades after  
11 refining with a series of numbers, each 500 or in one case  
12 it says 5,490. Can you describe the difference between  
13 processing and refining.

14 A In the terminology which we have used, processing  
15 involved the direct production of a product by simply  
16 grinding or changing in particle size the ore. Refining  
17 involves a process in which some component of the ore is  
18 separated from other components of the ore and one or more  
19 of them are sold as separate materials. In this particular  
20 instance, the grade numbers beginning with four are  
21 products, or I presume to be products produced in what is  
22 called the dry mill, the direct grinding mill. Somewhat  
23 after these products have been developed, another addition  
24 was built to the mill, was given the number 500 and the



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1 products of the flotation process of the refining process  
2 are the 500 series products.

3 Q So to your knowledge, all products that contain any of  
4 these numbers that you have listed in response number 29f  
5 would have come from what facility?

6 A The ore would have been produced from the Johnson mine.  
7 The products would have been produced from the Johnson mill.

8 Q What were the numbers associated with the Hammondsville mine?

9 A The Hammondsville mine products in the period to 1967  
10 were processed in two facilities; one of them produced  
11 grades 36 and 37, the other produced grades 66, 600, 649  
12 and 699.

13 Q Is the Hammondsville mine still operated by Windsor?

14 A Yes.

15 Q Has Windsor ever sold talc produced from the Hammondsville  
16 mine to Whittaker, Clark & Daniels?

17 A No, not to my knowledge.

18 Q What records did you research to determine that?

19 A This is information given to me by my predecessor.

20 Q Who is that?

21 A Mr. Eskilson.

22 Q When did you speak to Mr. Eskilson on this question?

23 A When I came to work in 1966, Mr. Eskilson explained  
24 to me the products sold to the roofing industry had never



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1 been sold through an agent and the grade 66 or 36 and 37  
2 are roofing industry products exclusively.

3 Q The grades 36 and 37 are roofing products?

4 A Yes.

5 Q What about the grades 66 or 600 or the other grades that  
6 you described as being produced by the Hammondsville  
7 facility?

8 A These were toiletries quality products. They were  
9 very highly refined products from flotation.

10 Q What is the difference in the talc, the physical structure  
11 of it, or chemical properties or anything else between  
12 talc used for the roofing industry and the talc that was  
13 produced by the Johnson mine?

14 MR. LEIBENSPERGER: I object to the  
15 form of the question.

16 A The talc sold to the roofing industry is sold at a  
17 very coarse particle size and is uniquely micaceous.

18 Q Could you explain what that micaceous means.

19 A With the form of a plate.

20 Q To your knowledge, what was the use to which the grades,  
21 40 grade talc was put when sold by Windsor?

22 MR. LEIBENSPERGER: You mean by EMT.

23 MR. PRENTISS: By EMT, excuse me.

24 A To my understanding, they were sold in the rubber



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1 industry, the plastic industry, the paint industry, in  
2 the gypsum wallboard industry, in the toiletries industry,  
3 in the agricultural industry.

4 Q Was there any one of those grades that was, to your know-  
5 ledge, utilized by the rubber industry more predominantly  
6 than another grade?

7 MR. LEIBENSPERGER: Objection to the form.

8 A I don't know.

9 Q So as far as you know, there wasn't any one of those  
10 numbers 40, 41, 44 or alike which was sold in greater  
11 quantity for use in the rubber industry than the other  
12 grades?

13 MR. LEIBENSPERGER: Objection to the  
14 form.

15 A I don't know.


16 Q After you went to work for EMT, did EMT continue to sell  
17 talc for use in the rubber industry?

18 A Yes.

19 Q For how long?

20 A I can only speak because I only worked in this  
21 organization for about 15 months during that period of time,  
22 they did, I know that, but I don't know anything else.

23 Q Did they sell to Whittaker, Clark & Daniels during that  
24 period of time?

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1 A I don't know.

2 Q Do you know whether they sold to Uniroyal during that period  
3 of time?

4 A No.

5 Q You don't know?

6 A I don't know.

7 Q Do you know whether any of the records that you have  
8 produced or referred to in your Answers give that answer?

9 A I believe the dates are included in the deposition,  
10 I mean in the interrogatories.

11 Q Do you know whether the talc or any talc mined at the  
12 Waterbury, Vermont mine was sold for use in the rubber  
13 industry?

14 A No, I don't know.

15 Q Can you tell me this, do you know what properties of talc  
16 are sought for use in the rubber industry?


17 A I don't know.

18 Q Is the talc that was mined at the Waterbury, Vermont  
19 mine similar in quality to the talc mined in Johnson?

20 MR. LEIBENSPERGER: Objection to the form.

21 A I don't know. The Waterbury mine was closed long  
22 before I got there.

23 Q I will ask you the same questions with regard to the  
24 Fayston, Vermont mine. Do you have any knowledge at all

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1 about the quality or type of talc mined at Fayston, Vermont?

2 A I know only that it was a program conducted during  
3 the second World War in an attempt to find steatite grade  
4 talc for military purposes and the operation was short-lived,  
5 that's all I know about it.

6 Q How many different processing facilities for talc were  
7 owned by EMT?

8 A Are you asking me with reference to a particular point  
9 in time?

10 Q To your knowledge, over the course of time between 1945 and  
11 1967, how many different facilities did EMT have for the  
12 processing of talc?

13 A Four.

14 Q And those were located where?

15 A At Johnson, Vermont, at Waterbury, Vermont, at Gassetts  
16 or Chester Depot, Vermont and at West Windsor, Vermont.

17 Q The Chester Depot facility was for which mine?

18 A For the Hammondsville mine.


19 Q The West Windsor was for which mine?

20 A The Hammondsville mine.

21 Q To your knowledge, is the Johnson, Vermont mine still in  
22 operation?

23 A Yes.

24 Q What was the sales organization for EMT -- did EMT undertake

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1 its own direct sales of talc to customers?

2 A Yes.

3 Q Did EMT also sell to distributors?

4 A Yes.

5 Q Did EMT have its own sales force going out into the field?

6 A Yes.

7 Q Did EMT deal directly with either Uniroyal or United States  
8 Rubber Company, Providence, Rhode Island?

9 MR. LEIBENSPERGER: Objection to form.

10 A I don't know.

11 Q Do you know whether any talc sold by EMT to Whittaker,  
12 Clark & Daniels were sold for and use at the Uniroyal  
13 plant in Providence?

14 A I don't know.

15 Q How was the talc sold by EMT delivered to its customers?

16 A The processed material was sold either in multi-wall  
17 paper sacks or in bulk. The bulk materials were shipped  
18 by truck, or by rail. The bagged materials were shipped  
19 in either less truck load or full truck load or less car-  
20 load or full carloads or rail cars. So customers provided  
21 their own vehicles.

22 Q Do you know whether EMT ever sold talc to Whittaker, Clark  
23 & Daniels for direct delivery to the Uniroyal plant in  
24 Providence?



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1 A I don't know.

2 Q Do you know if there's anyone who would be able to answer  
3 that question?

4 A I don't know.

5 Q You referred to your predecessor at EMT, who was that?

6 A Mr. Emil Esckilson.

7 Q Who lives in Gouverneur, New York?

8 A Yes.

9 Q Do you know if he is still there?

10 A Yes.

11 Q Do you know where he works?

12 A He is retired. He is an elderly man.

13 Q As vice-president of operations, did you have responsibility  
14 for sales?

15 A No.

16 Q Who had responsibility for sales in EMT at the time that  
17 you were vice-president of operations?

18 A Mr. Esckilson.

19 Q Did he continue to work there after you came on?


20 A Yes.

21 Q Who had responsibility for sales prior to your going to  
22 work for EMT?

23 A Mr. Esckilson.

24 Q So you kind of took over part of his responsibilities and

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1 he continued to have responsibility for sales, is that  
2 correct?

3 A Yes.

4 Q Do you know how far prior to your coming on with EMT, Mr.  
5 Esckilson had responsibility for sales?

6 A It's my understanding that he began his responsibilities  
7 in 1955.

8 Q Do you know who his predecessor was?

9 A Mr. E. W. Magnus, M-a-g-n-u-s.

10 Q Who is deceased?

11 A Who is deceased.

12 Q Do you know whether Minerals and Chemicals Phillip  
13 Corporation has been notified of this lawsuit?

14 MR. LEIBENSPERGER: You can answer.

15 A I believe they have.

16 Q Did you communicate to that corporation regarding this  
17 lawsuit?

18 A No.

19 Q Did someone at Windsor make that communication, to your  
20 knowledge?

21 A Well, what communication are you talking about?

22 Q Any communication.

23 MR. LEIBENSPERGER: Well, then I object  
24 to the question. I don't understand the question. The



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1 first question I thought was whether or not he knew whether  
2 service had been made upon them.

3 MR. PRENTISS: No, whether they were  
4 notified of this lawsuit, not service.

5 A Okay, I didn't understand that.

6 Q Why don't we go back.

7 A Why don't you start over.

8 Q Have you communicated to Minerals and Chemicals Phillip  
9 Corporation the fact that Windsor has been sued in this  
10 lawsuit?

11 A Yes.

12 Q To whom did you communicate that?

13 A A gentleman from New Jersey. I'm sorry, I don't  
14 recall his name.

15 Q Did you discuss with him the records that Phillip Corporation  
16 obtained at the time that it acquired that northern operations  
17 portion of the EMT business?


18 A Yes.

19 Q Did he tell you whether Phillip Corporation still retained  
20 those documents?

21 A This was a telephone conversation?

22 Q Yes, sir.

23 A He subsequently returned my call, said there had been  
24 two floods in their office in New Jersey and that the

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1 records were no longer there.

2 Q Does Phillip Corporation have offices in Johnson, Vermont?

3 A Let me ask counsel a question.

4 (WITNESS AND COUNSEL CONFERRING)

5 A ...Yes, they do.

6 Q This gentleman that you conversed with told you that the  
7 Phillip Corporation had transported all of the records that  
8 it had obtained from EMT to New Jersey?

9 A No.

10 Q What records did he tell you had been transported to New  
11 Jersey?

12 A I asked about a specific movement of records, the  
13 trailer, the guy backed the trailer in and we loaded all  
14 the records. The man who took those records told me that  
15 they were going to New Jersey, so my inquiry related to what  
16 had happened to the trailer load of records that had gone  
17 to New Jersey.


18 Q To your recollection, what records were put into that  
19 trailer for transportation to New Jersey?

20 A I answered that previously during this interrogation,  
21 so you can refer back to that, the general records having  
22 to do with sales and the business.

23 Q What other records were there?

24

MR. LEIBENSPERGER: That were not

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1 transported?

2 MR. PRENTISS: To New Jersey in that  
3 truck load.

4 MR. LEIBENSPERGER: Again, I object to  
5 the extent that you're asking him to orally give you an  
6 index or page-by-page description. To the extent he can  
7 give you a generalized answer of what he remembers, I don't  
8 have any objection.

9 MR. PRENTISS: Or if you can refer me  
10 to some better source for the information.

11 A All of the correspondence files, all of the payroll  
12 records, all of the tax records, surveying, engineering,  
13 blueprints, designs, quotations, supplier catalogs, those  
14 types of materials were present in the office in South  
15 Burlington.

16 Q When you say sales records, when you refer to sales records  
17 as having been transported to New Jersey, can you just  
18 state generically what you included as being sales records?

19 A The records of purchase orders, copies of purchase  
20 orders, the salesman's reports of call, the materials  
21 used in the selling campaign of the corporation, correspond-  
22 ence to and from customers.

23 Q Did the gentleman from New Jersey tell you that all of  
24 those records were destroyed in the flood?

1 A He told me that they could find none of them and they  
2 had had two floods, was I believe his entire answer to me.

3 Q In the shipping of talc, did EMT have its own fleet of  
4 trucks?

5 A No.

6 Q Did it use common carriers?

7 A To my understanding, common carriers and customer  
8 trucks.

9 Q Now, in your Answer to Interrogatory number five, Mr.  
10 Miller, you stated that EMT produced talc between the  
11 period 1904 and 1967. What is the basis on which you  
12 answered that?

13 A The corporate records, when we searched for the old  
14 recorded documents, we found indications of initiation of  
15 operations around 1904.

16 Q So your understanding is that Eastern Magnesia was formed  
17 in 1904?

18 A No, there were predecessor corporations that we have  
19 answered elsewhere, the chain of construction.

20 Q So the first predecessor of Eastern Magnesia was formed  
21 in 1904, is that what your answer is?

22 A That was my understanding, yes.

23 Q In your Answer to Interrogatory number six you state that  
24 the brand or commercial name of the talc was EMTAL. Was



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1       there a logo or similar kind of corporate symbol  
2       incorporating those letters?

3       A     Yes.

4       Q     Would you be able, if I gave you a piece of paper and a  
5       pencil, to approximately draw what that corporate logo  
6       looked like?

7       A     I can describe it generally, I think, with adequate  
8       clarity. It looks exactly like an interstate sign in that  
9       it is a shield and above the bar on the shield it said  
10      "ENTAL." That's my recollection.

11     Q     It had all five of those letters of equal size?

12     A     That was my understanding from my recollection, yes.

13     Q     What colors?

14     A     I believe they were gray and blue, blue above and  
15     gray below. I'm not certain that that was consistent.


16     Q     What color were the letters ENTAL?

17     A     They were white. They showed basically through in  
18     the examples that I saw.

19     Q     In your response number seven on page four, beginning on  
20     page four, you have described a series of tests that were  
21     done on talc produced in the Johnson mine. Can you tell  
22     me on what basis you have given that answer?

23     A     My responsibilities included the operation of the  
24     Johnson mill. There were the tests that were being performed

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1 on the product of the Johnson mine, those grades of materials  
2 that were listed at the time that I was there. These were  
3 my recollection of the tests that were being performed.

4 Q As to letter G, microscopic examination to estimate  
5 morphology of talc and associated minerals, was that test  
6 done on-site?

7 A These examinations were done on-site and were an  
8 ordinary part of most research and product development  
9 programs. So they might have been done also by consultants  
10 who report their definitions of what they examine.

11 Q Do you know whether EMT was in the habit of submitting  
12 material for analysis by consultants?

13 MR. LEIBENSPERGER: Objection to the form?

14 A I don't know.

15 Q During the time that you were associated with EMT?

16 A Yes.

17 Q And to whom did it submit those examples?

18 A <sup>Bartel</sup> Bartel Memorial Institute in Columbus, Ohio consulted  
19 with Eastern Mag on minerals and processing and I believe  
20 would have certainly as geologists and petrologists, would  
21 have examined microscopically the materials.

22 Q What was the purpose of the examination by <sup>Bartel</sup> Bartel?

23 A They were working with us in optimizing the processing  
24 plants, the refining processes to make pure talc from mixed

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1 material. It's necessary to separate the nontalc materials  
2 from the talc materials. That's achieved by subdividing  
3 the material first to the size of which all nontalc is  
4 separated from talc and you use a microscope to see when  
5 the surfaces are clean.

6 Q What were the associated minerals that you were trying to  
7 separate from the pure talc at the Johnson mine?

8 A Magnesite, a ferruginous variety of magnetite,  
9 chlorite and calciferous sulfide, iron sulfide.

10 Q Was there serpentine associated with the talc deposit at  
11 the Johnson mine?

12 MR. LEIBENSPERGER: Objection to the  
13 form of the question.

14 A Yes.

15 Q Was that a mineral that was sought to be separated from  
16 the talc as a part of this refinement process?

17 A No.

18 Q Why not?

19 A The talc and serpentine don't coexist in the minable,  
20 the commercial sections of the mine.

21 Q Can you explain what you mean by that, they they don't  
22 coexist?

23 A You are not dealing with an intermixture of talc and  
24 serpentine. Serpentine was the grandparent of the talc,

1 the talc formed around it. The mining of the commercial  
2 talc took place away from the serpentine, out of contact  
3 with the serpentine.

4 Q Was the deposit that was mined at the Johnson mine a  
5 deposit that included both talc and serpentine?

6 MR. LEIBENSPERGER: I object to the  
7 form. What do you mean by "deposit"?

8 Q Let me ask you if you understand what I'm saying when I  
9 say "deposit", Mr. Miller.

10 A The serpentine coexisted within the limits of mining  
11 with talc, but not in the mining areas. I don't know how  
12 better to describe it to you. I can't sell serpentine,  
13 so there was no mining activity in serpentine.

14 Q The Johnson mine, was that an open-pit mine?

15 A No.

16 Q It was a tunnel dug into some sort of a geologic structure?

17 A It was an inclined shaft.


18 Q How far down did that go?

19 A To my knowledge, about 400 feet.

20 Q Was there just that one shaft at the Johnson mine?

21 A No.

22 MR. LEIBENSPERGER: We should probably  
23 put a time period for these questions regarding the length  
24 of the shaft and how many shafts, because it may have changed

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1 over time.

2 A I want to be sure you understand that.

3 Q During the time that you worked at EMT, how many shafts  
4 were in operation?

5 A One.

6 Q How many other shafts had been in operation prior to that  
7 shaft?

8 A It's my understanding from historical references that  
9 there had been two prior shafts.

10 Q Were they in the same geographic vicinity as the shaft  
11 that was operating at the time that you were working with EMT?

12 A Yes, they were in the same ore body.

13 Q Did that ore body contain both talc and serpentine?

14 A Well, serpentine isn't ore. The ore body didn't  
15 contain any serpentine. The zone in which the ore body  
16 occurs had serpentine in it, but it isn't in the ore body.

17 Q In the zone in which the ore body occurred, was there also  
18 serpentine existing?

19 A Yes.

20 Q And the shaft went into the rocks that contained the ore  
21 body, is that correct?

22 A The shaft was in the talc zone.

23 Q Was there any serpentine anywhere present in that shaft,  
24 the one that was operating while you were working there?

1 A I don't know. It had been there for a long time  
2 before I got there.

3 Q Physically, by observation, in the shaft, can you tell  
4 me the difference between serpentine and talc?

5 A On fresh exposures, you can.

6 Q On an old exposure, can you?

7 A No, the dust accumulates on the surface and oxidizes  
8 and everything is the color of that wall right there.

9 Q Referring to kind of a buff color, tan color?

10 A Darker.


11 Q How physically is the talc mined?

12 A You are referring to the Johnson mine?

13 Q Yes, sir.

14 A To my understanding, an inclined shaft is sunk in the  
15 talc center. Stations or levels are established plus or  
16 minus 100 feet apart. Horizontal drifts, d-r-i-f-t-s,  
17 are driven under the overlying ore body. Raises, inclined  
18 openings upward are driven into the underbody of the ore  
19 body and these are then enlarged into stopes, s-t-o-p-e-s,  
20 from which the ore is extracted, dropped through the  
21 raises into rail cars, transported to the shaft, dropped  
22 into the skip, s-k-i-p, and hoisted to the surface. That's  
23 a short course.

24 Q How is the ore loosened to be put into the rail car?

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1 A By drilling and blasting.

2 Q What is the nature of the drills used? What does it look  
3 like?

4 A A pneumatic drill. It looks very much like a jackhammer  
5 that you are familiar with.

6 Q While you were working at the EMT plant, did the workers  
7 who were mining, actually mining, distinguish between  
8 serpentine and talc in their drilling and blasting to  
9 obtain ore to be transported up the shaft?

10 A The workers were directed by the supervisors who did.

11 Q Is the talc deposit at the Johnson mine, the talc ore body  
12 a solid, monolithic deposit of pure talc?

13 MR. LEIBENSPERGER: Objection to the form.

14 A No.

15 Q Is it an area of talc that's interspersed with different  
16 kinds of impurities?

17 MR. LEIBENSPERGER: Objection to the  
18 form.

19 A I will give you another short course. Talc is a  
20 metamorphic mineral. It's derived in place from something  
21 else. In the case of talc, it's derived from a class of  
22 materials called ultramaphic materials, dark, very dark  
23 materials. In that process, it's accomplished geologically  
24 in a zonal form. The best way to conceive of a talc deposit



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1 is to think of an onion and you take off a layer at a time.  
2 The character of the material changes as you go towards the  
3 core of the onion. That's what a talc deposit looks like.  
4 Talc in the Johnson mine was commonly interspersed with  
5 materials that are locally called cinders, c-i-n-d-e-r-s.  
6 These are relics of talc parents, or of the wall rock  
7 surrounding the talc. They are largely composed of the  
8 siliceous materials and of beatite, dark minerals which are  
9 extremely deleterious to the talc which is sold by its  
10 whiteness.

11 Q Now, you have analogized the talc deposit to an onion and  
12 you said that the character of the material changes as you  
13 penetrate to the core of this onion type structure.

14 A It's a three-dimensional material.

15 Q At the core of the onion is the pure talc, is that correct?

16 A No, at the core of the onion, in my experience, are  
17 relatively rich in carbonate materials and relatively low  
18 in talc. The wall, the exterior surface is relatively  
19 rich in talc and relatively low in carbonated material.  
20 It's a zonal material.

21 Q Can you further analogize from the onion structure that  
22 you have described as to where serpentine deposits or  
23 contaminants would be in relation to these layers of the  
24 onion-like structure?



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1 MR. LEIBENSPERGER: Objection to the form.

2 A From my own experience in the Johnson mine, I never  
3 saw any there. Subsequent information has come to me of  
4 later developments in the mine which have identified  
5 serpentine. In my own knowledge, I never saw any serpentine.

6 Q From your experience and education as a mining engineer,  
7 are you familiar with the manner, physically, in which  
8 serpentine would associate itself with talc deposits in  
9 a geologic deposit area such as was present at the Johnson  
10 mine?

11 MR. LEIBENSPERGER: I am going to object  
12 to the form of the question. At the end of it you related  
13 it to the Johnson mine, but you started out the question  
14 sort of hypothetical, how the serpentine would be found  
15 with talc. I think it should be one or the other. Do you  
16 want a hypothetical or do you want to ask him about  
17 Johnson & Johnson?

18 MR. PRENTISS: I'm going with respect to  
19 a deposit such as the Johnson mine.

20 MR. LEIBENSPERGER: I object to the  
21 form of that question. I think you should ask him what  
22 was the deposit at the Johnson mine, not such as or would  
23 be, what it was.

24 MR. PRENTISS: Well, I think he answered

1 the question.

2 MR. LEIBENSPERGER: I object to the form  
3 of the question. You can answer it if you understand it.

4 A Yes, I understand the relationships between talc and  
5 serpentine.

6 Q Physically, how does serpentine intersperse, if it does,  
7 with talc in a deposit where talc and serpentine are  
8 associated?

9 MR. LEIBENSPERGER: I object to the  
10 form of the question.

11 A To characterize this --


12 MR. LEIBENSPERGER: Again, we are talk-  
13 ing about the Johnson mine or are you getting into his  
14 expert opinion?

15 MR. PRENTISS: I'm talking about the  
16 Johnson mine.

17 A ...I really can't describe the Johnson mine because  
18 as I indicated earlier, I didn't ever see any serpentine  
19 at the Johnson mine.

20 Q What later information did you acquire that led you to  
21 believe that there was serpentine associated with the  
22 Johnson mine?

23 A I read a thesis produced by college students at the  
24 University of Vermont.

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1 Q What was the name of that student?

2 A I don't know.

3 Q When did you read it?

4 A Three months ago, perhaps three months ago.

5 Q Do you know whether chrysotile asbestos was associated in  
6 any way with the talc mined at the Johnson mine?

7 A My own experience, I never saw any.

8 Q Have you since acquired information that would suggest  
9 that there was chrysotile asbestos associated with the  
10 Johnson mine?

11 A No.

12 Q Did the paper by the student at the University of Vermont  
13 make any suggestion or reference to chrysotile asbestos  
14 as being associated with the Johnson mine?

15 A Not to my recollection, no.

16 Q Let me show you a document, Mr. Miller, that you produced  
17 in response to one of our requests for discovery and it's  
18 a letter dated September 12, 1966 to Mr. E. Esckilson,  
19 president of Eastern Magnesia Talc Company. Have you ever  
20 seen that?

21 A Yes.

22 Q Can you tell me where you found that?

23 A I believe I found it in the files that we have.

24 Q That's one of the documents that you brought down here today

1 in response to the request?

2 A Yes.

3 Q Was that Mr. E. Esckilson, that's the president of Eastern  
4 Magnesia who was your predecessor at the time you took over  
5 Vermont operations, is that correct?

6 A Yes.

7 Q And you found that document in the files of Windsor as  
8 successor to EMT, is that right?

9 A Yes, I had seen it before.

10 Q Did you see it at the time that it came in or shortly after  
11 that?

12 A I don't know. I probably did.

13 Q Was that retained by EMT in the regular course of its  
14 business, that record?

15 A I believe so, yes.

16 Q And that related to the business of EMT's operations in  
17 the talc industry?


18 A Yes.

19 Q Was it a document, or did EMT receive documents like that  
20 on a regular basis?

21 MR. LEIBENSPERGER: Objection to the form.

22 MR. PRENTISS: Let me rephrase that.

23 Q Did EMT receive documents like that on a regular basis from  
24 the government agency that produced that document?

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1 MR. LEIBENSPERGER: Objection to the form.

2 A No.

3 Q Did EMT ask to have the United States Department of Interior  
4 come in and do any kind of a survey of its mines?

5 A No.

6 Q Do you know the reason that the United States Department  
7 of the Interior made the survey that it did which culminated  
8 in this report?

9 A Yes.

10 Q What was the reason?

11 A The United States Bureau of Mines of the Department  
12 of the Interior is the predecessor in responsibility to  
13 an organization now called MSHA, the Mining Safety Health  
14 Administration. They were responsible for safety surveil-  
15 lance in the mines.

16 Q Did they inspect the mines on a regular basis?

17 MR. LEIBENSPERGER: Objection to the  
18 form of the question.

19 A On an irregular basis.

20 Q About how many times a year, would you say?

21 A I don't know.

22 Q Would it be more than one time a year, Mr. Miller, to your  
23 knowledge?

24 A I don't know.

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(PLAINTIFFS' EXHIBIT #1 MARKED FOR  
IDENTIFICATION)

Q I will refer you to page three of the enclosure that's accompanying this letter, an enclosure entitled, "Airborne Dust Survey Report, Johnson Mine and Mill, Eastern Magnesia Talc Company, Inc., Johnson, Vermont". At page three in the two paragraphs under the heading, "Settled Dust Samples," there is a statement, "Small amount of chrysolite," and that statement appears also in the second paragraph under that heading, chrysolite. What is chrysolite?

A It's a mineral.

Q Is that distinct from chrysotile?


A Yes.

Q What was the method used, if you know, for collection of dust by the United States Department of Interior for the preparation of this analysis?

A Can I have a moment?

Q Certainly.

A Referring to page two, they indicate that airborne dust samples were collected at locations selected by company officials as those which would best represent airborne samples. In this period, to my understanding, they were taken by a technique called a midjet impinger from which measured volumes of gases were educted against a membrane

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1 and the membrane was then projected on a screen and the  
2 number of particles counted and by relating the temperature  
3 and the volume of flow and the cross-sectional area of the  
4 screen, it was possible to determine the weight, or the  
5 number, excuse me, the number of particles per cubic foot  
6 in the atmosphere at the point of the sample. I'm sorry  
7 I can't be anymore definite than that.


8 MR. PRENTISS: I think what I'd like to  
9 do is have a recess and go through some of these documents  
10 and resume in about 20 minutes or so.

11 (SHORT BREAK)

12 MR. PRENTISS: For Exhibit #2, I've got  
13 a U.S. Department of Interior, Bureau of Mines report dated  
14 March 29 to 30, 1966. Exhibit #3 is a letter, State of  
15 Vermont, Department of Health stationery to Mr. E. W.  
16 Magnus, dated February 24, 1950. Exhibit #4 is a letter on  
17 Eastern Magnesia stationery with a date containing the  
18 first sentence of August 21, 1958. There is no addressee  
19 on that letter.

20 Exhibit #5 is a letter, State of Vermont, Department of  
21 Health to Mr. Eskilson dated May 20, 1966. Exhibit #6 is  
22 a letter from the State of Vermont, Department of Health  
23 to Mr. Eskilson dated April 18, 1967, two pages. Exhibit  
24 #7 is a letter --

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1 MR. LEIBENSPERGE: Just to correct that  
2 last one, you said two pages. I think the second one is  
3 just a carbon of the first one. It's the same letter.


4 MR. PRENTISS: Exhibit #7 is a letter  
5 from the State of Vermont, Department of Health to Mr.  
6 Esckilson dated April 12, 1965. Exhibit #8 is a report  
7 on the letterhead of Skinner, Sherman & Lukens dated  
8 January 20, 1967.

9 Exhibit #9 is a letter to Mr. Magnus of Eastern  
10 Magnesia Talc Company dated December 5, 1960 together with  
11 an enclosure.

12 MR. LEIBENSPERGER: The enclosure  
13 appears to be the 1960 U.S. Bureau of Mines report.

14 MR. PRENTISS: Exhibit #10 is a letter  
15 containing two pages of enclosures to Eastern Magnesia  
16 Talc Company from the C. P. Hall Company dated March 27,  
17 1962. Exhibit #11 is a series of ledger sheet pages which  
18 relate to Whittaker, Clark & Daniels, Inc., New York 7,  
19 New York, a total of 12 pages.

20 Q I will ask Mr. Miller, I have a loose bundle of pages here,  
21 one actual bundle of pages is stapled, ledger sheet pages  
22 entitled, "United States Rubber Company" and then there is  
23 a loose sheet that also was entitled, "United States Rubber  
24 Company".

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1 A 1955, 1954.

2 Q What does that date say?

3 MR. LEIBENSPERGER: I think that's  
4 through 1963, possibly.

5 A 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953,  
6 1954, 1955. This is a mistake, Mechanical Rubber Company,  
7 that doesn't belong here. I see, it says United States  
8 Rubber Company. Well, 1955, if that's it, 1955 and then  
9 that's part of this.

10 MR. PRENTISS: Why don't we mark it  
11 separately if we can't identify it. Number 12 is a stapled  
12 bundle of ledger sheets that carry, apparently, an account  
13 called United States Rubber Company of Providence. Number  
14 13 is a single page from a ledger that also contains the  
15 name "United States Rubber Company, Bags". Number 14 is a  
16 list of firms together with certain statistics about those  
17 with the date 1961. It's entitled, "Car Load and Truck  
18 Load Customers".

19 MR. LOVEGREEN: Is that 1961 or 1960,  
20 isn't it two years?

21 MR. LEIBENSPERGER: There's a column for  
22 1960 and a column for 1961.

23 MR. PRENTISS: Number 15 is a single  
24 page with handwritten figures and it's entitled, "Shipments"



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1 and the handwritten figures indicate the years 1942 through  
2 1957. Number 16 is a document entitled, "Articles of  
3 Association of Eastern Magnesia Talc Company, Inc."  
4 Number 17 is a bundle of documents, six pages. It's headed  
5 with the letter on the stationery of A. Pearley Peen to  
6 Mr. Magnus at Eastern Magnesia Talc Company carrying a  
7 date of February 2, 1959. Off the record.

8 (OFF THE RECORD)


9 MR. PRENTISS: Number 18 is a bundle of  
10 annual reports to the State of Vermont, it appears to be by  
11 the Eastern Magnesia Talc Company. The first report is  
12 1950 and the bundle appears to go through 1966.

13 MR. LEIBENSPERGER: We haven't gone  
14 through these to see if each year is there.

15 MR. PRENTISS: There may be other  
16 years, but I will entitle the whole bundle as Exhibit #18.  
17 Number 19 is a several-page document of graphs and  
18 figures with a title, "EMTCO. 1. Industry Sales. 1960-1965."  
19 Number 20 is several pages of figures, a copy with a  
20 title page, it states, "13. Rubber."

21 (PLAINTIFFS' EXHIBITS #2 THROUGH #20  
22 MARKED FOR IDENTIFICATION)

23 Q Mr. Miller, we have just marked documents as Exhibits #1  
24 through #20. Are all these documents documents that you

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1 have brought with you today in response to the notice of  
2 deposition that was issued concerning this deposition of  
3 you?

4 MR. LEIBENSPERGER: Well, in response  
5 to the request for production of documents.

6 A Yes.

7 Q Where did you obtain all these documents?

8 A From the files of Windsor Minerals.

9 Q Are you, as the president of Windsor Minerals, the person  
10 with the ultimate responsibility for the care, custody  
11 and control of all of these documents?

12 A Yes.

13 Q To your knowledge, were these documents compiled in the  
14 regular course of the business of Windsor Minerals or its  
15 predecessor corporations?

16 MR. LEIBENSPERGER: Objection to the form  
17 of the question.


18 A To my knowledge, yes.

19 Q To your knowledge, was the business of Windsor Minerals  
20 or its predecessors to keep such files and records as  
21 part of its business.

22 MR. LEIBENSPERGER: Objection to the  
23 form of the question.

24 A I have no certain knowledge of what the processes

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1 were in record-keeping.

2 Q But you obtained these from the business files of Windsor  
3 and from its predecessor corporations where appropriate?

4 A Yes.

5 Q Could you refer to your Answers to Interrogatories, Mr.  
6 Miller. I'd like you to refer to response number 11b.  
7 You referred to the location of the plant or facility  
8 involved in the sale and/or distribution of talc as being  
9 in Burlington, Vermont prior to 1959 and in South Burlington,  
10 Vermont from 1959 to 1967. What was the change that  
11 occurred in 1959?


12 A The change in location of the corporation's offices  
13 which included the sales offices.

14 Q Was there any change in the milling facility or location  
15 of the milling facility or any other processing facilities  
16 at that time?

17 A Not to my knowledge.

18 Q You testified that you inquired of the Phillip Corporation  
19 as to records in response to the discovery request that  
20 was served on Windsor as a part of this lawsuit. Did you  
21 make inquiry of any other person regarding documents or  
22 any other information in response to the discovery that  
23 was served on you as part of this litigation?

24 MR. LEIBENSPERGER: I object to the

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1 question to the extent that it would include inquiries  
2 made to counsel as coming within the attorney/client  
3 privilege.

4 Q With the exception, excluding inquiries of counsel, did you  
5 inquire of any other person?

6 A Yes.

7 Q Who?

8 A Are you on question 11 still?

9 Q No, I'm talking in general as to your inquiries regarding  
10 our request for discovery in this lawsuit.

11 A I believe that we have given you a list of all of the  
12 parties to whom I have inquired as part of the Answer to  
13 Interrogatories.

14 MR. LEIBENSPERGER: No, we have not.

15 A ...Okay, Mr. Emil Esckilson, Lorenzo Rodizza.

16 Q Who is that?

17 A He is the controller of Windsor Minerals.

18 Q Rodizza; how do you spell that?

19 A R-o-d-i-z-z-a.

20 Q He is currently controller of Windsor?

21 A Yes.

22 Q Who else?

23 A Rose Buzzwell.

24 Q Who is she?

1 A She is my secretary. Frank Hasty, H-a-s-t-y.

2 Q Who is he?

3 A Office manager. Emil Esckilson, that's the former  
4 president, Eastern Mag. <sup>Charles</sup> Mr. Chittister.

5 Q Who is he?

6 A He is a geologist.

7 Q For whom?

8 A United States Geological Survey.

9 Q Anyone else?

10 A William Gregg.

11 Q Who is he?

12 A He is a geologist.

13 Q For whom is he employed by?

14 A He is a professor at the Michigan College of Mines  
15 and Technologies.

16 (SHORT BREAK)

17 Q After Mr. Gregg, did you have any other person that you  
18 inquired of regarding this?

19 A Harry Ashe, A-s-h-e.

20 Q Where is he?

21 A He is in Williamstown, Vermont, Williamstown, Vermont.

22 Q Who does he work for?

23 A He is a former director of occupational health, the  
24 State Board of Health, State of Vermont.

1 Q What other person?

2 A Nancy Butera and Marge Gilliam.

3 Q Who was the woman Butera?

4 A She is a clerk at the same office where Harry used to  
5 work.

6 Q And Marge Gilliam?

7 A She also worked for the Board of Health in occupational  
8 health. I believe she is a clerk.

9 Q Any other person?

10 A W. A. Dezaine, D-e-z-a-i-n-e.

11 Q Who is he?

12 A He was an underground miner at the Johnson mine.

13 Q The underground miner?

14 A He was an underground miner at the Johnson mine.

15 Q Does he still work for EMT?

16 A He works for Windsor Minerals.

17 Q Any other person?

18 A Ed Padgorski, P-a-d-g-o-r-s-k-i.


19 Q Who is he?

20 A He was a former director of the United States Bureau  
21 of Mines office in Albany, New York.

22 Q Any other person?

23 A Lucien Lemery.

24 Q How do you spell that?

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1 A L-e-m-e-r-y.

2 Q Who is he?

3 A He was a mill employee of Eastern Magnesia Talc  
4 Company.

5 Q Where is he employed now?

6 A He works for Windsor Minerals at the present time.

7 Q Any other person?

8 A Roger Perkins, he is a former -- he is retired, he  
9 was a former mill employee of Eastern Magnesia Talc.

10 Q Where does he live?

11 A Johnson, Vermont.

12 Q Is there any other person?

13 A Did I give you Mr. Esckilson?

14 Q Yes, you did.


15 A The gentleman from Englehart.

16 Q What was his name?

17 A I still haven't thought of it. It's a Scotch name,  
18 McIlwain, a name similar to McIlwain.

19 Q You made reference just a moment ago to Englehart. Who is  
20 Englehart?

21 A Phillip-Englehart, they have changed their name. It  
22 was Minerals and Chemicals Phillip when they bought  
23 Eastern Mag and they have since changed their name, I  
24 believe, to <sup>Engelhardt</sup> ~~Englehart~~ Minerals and Chemicals.

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1 Q To your knowledge, those are one-in-the-same corporation?

2 A It is my understanding.

3 Q What was the purpose of your inquiry to Mr. Chittister  
4 of the United States Geological Survey?

5 MR. LEIBENSPERGER: I object to that.

6 Mr. Chittister is a potential expert so I think the  
7 inquiries to Mr. Chittister were in the nature of obtaining  
8 expert testimony, which I think is proper discovery only  
9 allowed under 26(b)(4), and not through this deposition.

10 Q What was the nature of your inquiry of Mr. William Gregg?

11 MR. LEIBENSPERGER: I object on the  
12 same grounds with respect to him.

13 Q What was the nature of your inquiry to Mr. Harry Ashe?


14 A I inquired of Mr. Ashe regarding records of sampling  
15 and morphology of the materials when the State Board of  
16 Health conducted their tests.

17 Q Have you provided in response to our discovery requests  
18 everything that Mr. Ashe was able to provide you?

19 A Mr. Ashe led me to these materials, yes, sir. I did  
20 say that he was no longer a state employee, didn't I, he's  
21 retired.

22 Q Mr. Padgorski was the former director of the U.S. Bureau  
23 of Mines office in Albany, New York, is that correct?

24 A Yes.

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1 Q What was the nature of your inquiry to him?

2 A I asked him for copies of the U.S. Bureau of Mine  
3 dust sampling reports of the Johnson mine.

4 Q Is Mr. Rodizza still in the employ of Windsor?

5 A Yes.

6 Q Do you still have the Answers to Interrogatories in front  
7 of you?

8 A Yes.

9 Q Would you turn to response number 29 on page 25. In 29a,  
10 response 29a, the question is, "State the date or dates  
11 you first commenced operations involving the processing or  
12 refining of talc," and your answer is, "Eastern Magnesia  
13 Talc Company, circa 1933." Earlier, or in response to an  
14 earlier interrogatory and in earlier questions in this  
15 deposition you stated your knowledge or understanding to  
16 be that operations under either EMT or its predecessors  
17 had begun in 1904. Can you explain that?

18 A The question added the word "refining" and the flotation  
19 plant went in, I believe, in 1933.


20 Q Was there processing carried on prior to that?

21 A Yes.

22 Q But the refining operation began in 1933?

23 A Yes.

24 Q What was the manner of packaging of talc that was sold by

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1 EMT other than that which was sold in bulk?

2 A Multi-wall, paper bags.

3 Q What was the writing that was on those bags?

4 A I don't know.

5 Q Do you know whether EMT during the period 1945 and 1967  
6 contained any warnings or other statements on its packaging  
7 for talc which related dangers or any other hazards  
8 associated with exposure to talc?

9 A I don't know.

10 Q Do you know if there is any person who would know that?

11 MR. LEIBENSPERGER: I object to the  
12 form of that question. I suppose if he knows, if somebody  
13 that has told him that they know, that would be a fair  
14 question, but you said who would know it. You'd be  
15 speculating about somebody else's knowledge.

16 A I don't know of anyone.


17 Q Did you ask this question of Mr. Esckilson?

18 A No.

19 Q Why not?

20 MR. LEIBENSPERGER: I object to the  
21 form of that. You don't need to answer. It's not an  
22 objection to form, it's an objection to substance. It's  
23 irrelevant.

24 MR. PRENTISS: Well, I don't think it is

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1 irrelevant.

2 MR. LEIBENSPERGER: He has no obligation  
3 to make inquiry of people outside of Windsor Minerals.  
4 The interrogatories are directed to Windsor Minerals. Now,  
5 to the extent that he is talking with people, you can ask  
6 him the substance of their conversations clearly, and you  
7 have, but I don't think you have any right to have him  
8 speculate on why he asks one thing or didn't ask another  
9 thing.

10 MR. PRENTISS: I think I do, actually.  
11 He said he made inquiry of these people as part of his  
12 efforts to answer these interrogatories and respond to  
13 this discovery.


14 MR. LEIBENSPERGER: I instruct you not  
15 to answer.

16 Q What did you ask Mr. Esckilson?

17 A I asked Mr. Esckilson for any information or records  
18 <sup>he</sup> I might have concerning sales.

19 Q Did you make any inquiry of him regarding any of the  
20 substance of the interrogatories that were served on you  
21 other than information regarding sales?

22 A I asked him when the office was relocated, because  
23 I didn't know that. It turned out he was wrong. I asked  
24 him about sales or sales records, or records radiating to

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1 U. S. Rubber Company or Whittaker, Clark & Daniels.

2 Q Windsor, more properly EMT, had contracts over a period  
3 of time with the United States Rubber Company in New York,  
4 New York. Are you familiar with the contents of any of  
5 those contracts?

6 A I am aware that they exist. We found them in the  
7 files. I haven't studied them carefully.

8 Q EMT also delivered and sold and delivered talc to United  
9 States Rubber Company plants in various part of New England;  
10 are you aware of that?

11 A Yes, I am.

12 Q Do you know whether the sales of talc to United States  
13 Rubber Company factories in New England were made pursuant  
14 to contracts between EMT and United States Rubber Company  
15 of New York?


16 A I don't know.

17 MR. PRENTISS: I'm asking to have these  
18 contracts marked.

19 MR. LEIBENSPERGER: As one exhibit?

20 MR. PRENTISS: To save time, I think we  
21 might as well mark them as one exhibit. I'd like to recite  
22 into the record the dates of the contracts so that we are  
23 clear on that.

24 Q I will show them to you, Mr. Miller, and I will finish up

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1 with them, so you can go ahead and take a look at them.

2 MR. PRENTISS: I have a contract between  
3 Eastern Magnesia Talc Company and United States Rubber which  
4 is dated December 14, 1954. Another which is dated the 9th  
5 of December, 1955 between EMT and U. S. Rubber. I have  
6 another which carries the same date.

7 Q Can you tell me whether those are duplicates?

8 MR. LEIBENSPERGER: Well, I object to  
9 that, unless you know from some prior investigations they  
10 are duplicates. If you are asking at the moment for him  
11 to compare them word-for-word to see whether they are  
12 duplicates, that's not a fair question.

13 Q Do you know? You compiled these documents to bring down  
14 here, didn't you?

15 A I don't know that they are. On the <sup>face</sup> fact of it, they  
16 are not, because the front page is different.

17 MR. PRENTISS: I have another contract  
18 between Eastern Magnesia and United States Rubber dated  
19 November 25, 1957. Contract dated November 21, 1951 between  
20 EMT and United States Rubber. Contract dated February 17,  
21 1948 between Eastern Magnesia and United States Rubber.  
22 A three-page document, including a last-page contract that  
23 carries a date of July 7, 1941. A statement with attached  
24 contract between Eastern Mangesia Talc Company and United



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1 States Rubber carrying a date of January 14, 1942.

2 MR. LEIBENSPERGER: I'm going to object  
3 to 1941 and 1942 being outside the time period. They  
4 shouldn't have been included in the documents produced.  
5 I thought we had pulled them out. Maybe we should take  
6 the ones before 1945 out of this exhibit.

7 MR. PRENTISS: Let me take a look at  
8 them. We can pull them out of the exhibit.

9 MR. LEIBENSPERGER: They are not within  
10 your document request, so we are not going to produce them.

11 MR. PRENTISS: Contract between Eastern  
12 Magnesia and United States Rubber carrying the date  
13 December 21, 1946. Contract between Eastern Magnesia and  
14 United States Rubber carrying the date December 14, 1954.  
15 Another contract between Eastern Magnesia and United States  
16 Rubber carrying the date December 14, 1954. Another con-  
17 tract bearing the date December 14, 1954 between Eastern  
18 Magnesia and United States Rubber. Contract bearing the  
19 date October 20, 1945 between Eastern Magnesia and U. S.  
20 Rubber. Another contract between Eastern Magnesia and  
21 United States Rubber bearing the date December 12, 1952.  
22 Next is a three-page contract between Eastern Magnesia and  
23 United States Rubber dated December 9, 1948 and a contract  
24 between Eastern Magnesia and U. S. Rubber dated December 22,



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1 1949. A contract dated January 16, 1951 between Eastern  
2 Magnesia and U. S. Rubber. Finally, a contract dated  
3 December 3, 1953 between Eastern Magnesia and United States  
4 Rubber. I'd like to have these marked as a single exhibit.

5 (PLAINTIFFS' EXHIBIT #21 MARKED FOR  
6 IDENTIFICATION)

7 Q Mr. Miller, where did you find those contracts?

8 A In the accumulated record. They were brought to me  
9 by Mr. Hasty.

10 Q And those were contained in the files of Windsor Minerals,  
11 Inc.?

12 A Yes.

13 Q To your knowledge, were those contracts maintained in the  
14 files of EMT, Eastern Magnesia in the regular course of its  
15 business?

16 A I presume so. I don't know that.

17 Q And you are custodian now as president of Windsor of the  
18 files, of those files of EMT retained by Windsor, is that  
19 correct?

20 A Yes.

21 Q To your knowledge, are those contracts that were entered  
22 into by EMT in the course of its sale of talc?

23 A Not to my knowledge, no.

24 Q Do you have any knowledge that they were, that they are not



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1 authentic?

2 A I have no knowledge that they form the basis of a  
3 business relationship between Eastern Mag, all I have are  
4 the contracts.

5 Q Can you tell me, Mr. Miller, whether from the time you  
6 began work at Eastern Magnesia there was any use of breath-  
7 ing apparatus or masks of the like of a protective nature  
8 used by miners who mined talc for Eastern Magnesia?

9 A Yes.

10 Q What was the kind of device that they used?

11 A A permeable membrane.

12 Q Was it a company policy to require use of those masks?

13 A In some circumstances.

14 Q What circumstances?

15 A If a man was exposed to excessive burden.

16 Q What was considered excessive dust burden?

17 A Burden in excess of the threshold limit values.

18 Q What threshold limit values did EMT utilize?

19 A The industry standard.

20 Q Which industry standard is that?

21 A The ACGIH.

22 Q Can you tell me what those initials stand for?

23 A American Conference of Governmental and Industrial  
24 Hygienists.  
Hygienics.

1 Q Were those standards published periodically?

2 A Yes.

3 Q How would EMT make the determination that dust at anytime  
4 exceeded the level that was published as being the threshold  
5 level?

6 A They were guided by the Bureau of Mines in the State  
7 of Vermont.

8 Q Were there then some operations of the mining process that  
9 were deemed to be areas where masks must be worn?

10 A Yes.

11 Q During the time that you worked for EMT, did EMT provide  
12 communication to any of its customers as to those threshold  
13 levels?

14 A I don't know.

15 Q You don't know?

16 A No.

17 Q You were vice-president of operations in that capacity.  
18 Did you have any responsibility for communication of such  
19 information to the customers of EMT?

20 MR. LEIBENSPERGER: Objection to the form.

21 A No.

22 Q Was there any person in EMT who had any responsibilities  
23 for communication of such threshold limits to customers of  
24 EMT?



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1 A I don't know.

2 Q Do you know what the purpose of protective masks was?

3 A Yes.

4 Q What?

5 A To limit the burden on the lungs below 20 million  
6 particles per cubic foot.

7 Q Are you aware of any hazards that can result from inhalation  
8 of dust in excess of whatever the threshold limit is?

9 MR. LEIBENSPERGER: What dust are we  
10 talking about?

11 MR. PRENTISS: The dust that protective  
12 masks were proposed to be on miners to protect against.

13 A By indirection, I believe the standards were established  
14 in response to a medical need.

15 Q Do you know what the medical need was?

16 A No.

17 Q Do you know what diseases were claimed or feared to result  
18 from inhalation of dust?


19 MR. LEIBENSPERGER: Objection to the form.

20 Q ...In the talc mines?

21 MR. LEIBENSPERGER: Objection to the form.

22 A I don't know. I haven't read the deliberations of  
23 the committee.

24 Q So you were never told that by any person?

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1 A No. In general, you are talking about pneumoconiosis?

2 Q What is pneumoconiosis versus a burden on a lung from  
3 particulate material?

4 A Farmers, everyone breathing dust is susceptible to  
5 this from a variety of dust.

6 Q What is talcosis?

7 MR. LEIBENSPERGER: I'm going to object  
8 to the question to the extent you are asking for an expert  
9 medical opinion of what talcosis is. Mr. Miller is not a  
10 person with a medical background.

11 Q I'm going to show you what's been marked as Exhibit #6  
12 in this deposition, Mr. Miller, and that's a letter from  
13 the State of Vermont, Department of Health and there is a  
14 letter to Mr. Esckilson. It contains on it first the  
15 number of total payroll, number X-rayed and then a line  
16 that says, "Diagnosis, colon, quote, 'Talcosis,'" and the  
17 number four. Have you seen that before today?

18 A Yes.

19 Q Did you see that at the time that it came in? It's dated  
20 April 18, 1967.

21 A My initials are not on it. I don't know.

22 Q Do you know what this word "talcosis" refers to on that  
23 document?

24 A I believe it refers to an interpretation by this



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1 department of their reading of the X-rays.

2 Q What is your understanding of what talcosis is as it  
3 relates to that document?

4 MR. LEIBENSPERGER: Objection and  
5 instruct the witness not to answer.

6 Q Mr. Miller, you were in charge of operations at Windsor  
7 or at EMT, and that included the mining of the talc, didn't it?

8 A Yes.

9 Q And it included such things as health and safety of workers?

10 A Yes.

11 Q And as part of your responsibilities in charge of the  
12 health and safety of the workers, did you know that some of  
13 your workers were being diagnosed as having talcosis in  
14 April, 1967?

15 A In all probability, yes.

16 Q What do you understand talcosis to be?

17 MR. LEIBENSPERGER: I object. You're  
18 asking for a medical definition.

19 MR. PRENTISS: I'm asking for his opinion.

20 MR. LEIBENSPERGER: May I finish my  
21 statement? You are asking him for a definition of a  
22 medical word that's totally irrelevant to this case.  
23 There's no evidence anywhere at all in this case of talcosis,  
24 so I object to the question and instruct the witness not to

1 answer.

2 MR. PRENTISS: I'm just asking, for the  
3 record, for this gentleman's understanding of the matter  
4 that was within his responsibility, his area of  
5 responsibility by his own testimony. Are you instructing  
6 this witness not to answer questions regarding his under-  
7 standing of what matters are within his responsibility?

8 MR. LEIBENSPERGER: Absolutely not,  
9 I'm instructing the witness not to answer your prior  
10 question, Mr. Prentiss.

11 Q Mr. Miller, over the course of the time that you were in  
12 charge of operations at EMT, how many workers had talcosis?

13 A I don't know.


14 Q And those workers who have talcosis, have further studies  
15 been done regarding the nature of the problems or disease,  
16 to your knowledge?

17 MR. LEIBENSPERGER: May I ask a question  
18 before I instruct the witness not to answer the question.  
19 May I ask for some statement by the questioner as to why  
20 this is relevant to this case. This is the case of Westfall.

21 MR. PRENTISS: Certainly.

22 MR. LEIBENSPERGER: If it's relevant,  
23 I will let the witness answer the question.

24 MR. PRENTISS: Talcosis, to my

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1 understanding, is a very general and non-definitional  
2 term. that has been used over the course of decades to  
3 describe any one of a number of lung diseases that are  
4 attributed to talc inhalation, including, but not limited  
5 to, mesothelioma, cancer of the lung, and mixed pneumoco-  
6 niosis due to a variety of powder inhalation and so the  
7 mere statement of talcosis does not exclude any particular  
8 disease that happens to be at issue in this lawsuit.

9 MR. LEIBENSPERGER: So in your opinion,  
10 when you use the word "talcosis", it includes mesothelioma  
11 as a possible subdefinition of talcosis?


12 MR. PRENTISS: I'm not giving my opinion,  
13 I'm asking the witness' understanding, the witness who had  
14 responsibility for this aspect of the operation of this firm.

15 MR. LEIBENSPERGER: I don't think there  
16 is any medical evidence to support your opinion, but I  
17 will let it go a little further.

18 Q It is my understanding that there were annual surveys  
19 similar to the study that you made reference to and those  
20 annual surveys are conducted by the State of Vermont?

21 A Yes.

22 Q Did EMT, to your knowledge, conduct any studies regarding  
23 the nature of the problem that those workers who were  
24 diagnosed by the State of Vermont as having talcosis?

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1 A Not to my knowledge.

2 Q During the time that you were there?

3 A Yes.

4 Q Do you know whether EMT did any such studies of its own  
5 prior to the time that you came to work for EMT?

6 A I don't know.

7 Q During any of the time that you were with EMT, did you have  
8 any association or responsibility for sales?

9 A No.

10 Q Do you know how long prior to your going to work for EMT  
11 that there was a policy within EMT that miners in certain  
12 aspects of the mining operation would wear prospective masks?

13 A No.

14 Q That wasn't in effect when you arrived there?


15 A Yes. I presume when you use the word "miner", you  
16 are talking about miners and millers; you are talking about  
17 the hourly employees in the mines and the processing plant  
18 both.

19 Q I was referring to people wh go down into the mines, but  
20 were there other employees of EMT who were required, under  
21 policies of EMT to wear protective masks?

22 A Yes.

23 Q What other employees?

24 A Employees in the mill might under similar exposure be

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1 required to take the same preventative steps.

2 Q Mr. Miller, on July 16, 1982 you executed an affidavit in  
3 connection with this lawsuit. Do you recall that?

4 A Yes.

5 Q In paragraph 11 of that affidavit you stated, "Windsor is  
6 not a" quote,""successor corporation," to Eastern Magnesia  
7 Talc Company, Inc. as is alleged in the complaint." On  
8 what basis did you make that statement?

9 A I did it on the basis of my understanding of what  
10 had gone before it.

11 Q Did your understanding since that time change?

12 A Yes.

13 Q You also executed an affidavit on October 18, 1982 in  
14 connection with this case. Do you recall that?

15 A Yes.

16 Q Now, in that affidavit, you make reference to a W. H.  
17 Ashton; who is he?

18 A He is an employee of Johnson & Johnson.

19 Q What is his capacity or position now?


20 A He is a physical scientist.

21 Q Where is his office?

22 A In New Jersey.

23 Q Did you call him in connection with this lawsuit?

24 A No.

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1 Q Did he call you?

2 A No.

3 Q In your affidavit you state that in February, 1981 Mr.  
4 Ashton, an employee of J&J, Johnson & Johnson was contacted  
5 by William Curran, Esquire, an attorney representing  
6 Metropolitan Talc Company in the present case. Where did  
7 you get that information?

8 A Mr. Bolden, an attorney.

9 Q Who is Mr. Bolden?

10 A He is an attorney with Johnson & Johnson.

11 Q Where is his office?

12 A In New Jersey.

13 Q Did Mr. Bolden contact you to relate that to you?

14 MR. LEIBENSPERGER: At what time? You  
15 mean in preparation for submitting the affidavit?


16 MR. PRENTISS: This affidavit.

17 MR. LEIBENSPERGER: I'm still not sure  
18 what contact you are referring to.

19 MR. PRENTISS: I am trying to find out  
20 where this affiant obtained the information that supported  
21 his sworn testimony.

22 A As I stated here, Mr. Curran's contact was made known  
23 to Frank Bolden, an attorney employed by J&J.

24 MR. LEIBENSPERGER: The question is with

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1 respect to the preparation of the affidavit and signing it.  
2 You say Mr. Bolden provided the information and I think  
3 the question was, did he contact you to provide it.

4 THE WITNESS: Yes.

5 Q When did he contact you?

6 A In early 1981.

7 MR. LEIBENSPERGER: Wait a minute, I'm  
8 not sure of that, though. The question was, when did he  
9 contact you with respect to the preparation of this affidavit.

10 THE WITNESS: In recent months.

11 Q Let me go to your answer, the earlier answer. When did  
12 you first hear from Mr. Bolden in relation to this subject  
13 matter, that's the conversation with Mr. Curran?

14 A It was early 1981, from my recollection.

15 Q What did Mr. Bolden say to you in that conversation?

16 MR. LEIBENSPERGER: I'm going to  
17 object, only to the extent -- I'm not going to object at all.

18 MR. PRENTISS: I understand the  
19 difficulty of the attorney/client, but I think we've got  
20 to answer these questions.

21 MR. LEIBENSPERGER: To the extent he  
22 was just relating factual matters is not within the  
23 privilege, so if there is any parts of the conversation  
24 that was legal advice that would be privileged, but as I



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1 understand it, I'm not objecting.

2 A Mr. Bolden contacted me, said he had been contacted  
3 by an attorney for Metropolitan Talc who was involved with  
4 the question regarding Italian Talc and Frank was inquiring  
5 of me did I have information or test results in those  
6 types of things which could be useful with regard to  
7 Italian Talc and I told him No.

8 Q Why didn't Mr. Bolden, do you know, did he tell you why  
9 he contacted you to find out about Italian Talc?

10 A I don't know why?

11 Q Do you know whether Johnson & Johnson owns any other firms  
12 or subsidiaries that are involved in the talc business  
13 besides Windsor?

14 A No.

15 MR. LEIBENSPERGER: Was it No, that  
16 you don't know or No?

17 A ...No, they don't own any others, to my knowledge.

18 Q They don't own any other besides Windsor?

19 A No.

20 Q So you are it as far as talc for Johnson & Johnson is  
21 concerned?

22 A As far as Windsor Minerals is concerned. I am it  
23 as far as Windsor selling talc products.

24 Q But you, the corporation, Windsor is the only talc



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1 manufacturer/miner to your knowledge that Johnson & Johnson  
2 owns?

3 A Yes.

4 Q Where is Mr. Bolden's office again; what part of New Jersey,  
5 what city?

6 A New Brunswick, New Jersey.

7 Q You said that -- did Mr. Bolden tell you that he had been  
8 contacted by Mr. Curran?

9 A I believe that's what he told me.

10 Q Your affidavit states that Mr. Curran contacted Mr. Ashton  
11 and that Mr. Ashton contacted Mr. Bolden. Is it possible  
12 that Mr. Curran contacted both or that your recollection  
13 is a little vague on that?

14 A I'm not sure of that. I'm trying to state to you  
15 what my recollection was.

16 Q How well do you recall that conversation that you had with  
17 Mr. Bolden?


18 A Not well at all, because it wasn't a significant  
19 conversation. It didn't have anything to do with this.

20 Q Are you certain Mr. Bolden told you he was only inquiring  
21 about Italian Talc?

22 A Yes, I remember that.

23 Q Why are you certain about that?

24 A Because I remember my answer, which was that I had no

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1 information regarding Italian Talc.

2 Q Are you sure that he didn't say to you that it just  
3 involved talc in general?

4 A Yes, I'm sure that that was not the conversation.

5 Q He couldn't have said that there was a lawsuit that  
6 related to talc and that Mr. Curran was only involved in  
7 Italian Talc, or Mr. Curran wants to know is Italian  
8 Talc; could it have been that way?

9 A No, that was not the conversation.

10 Q Tell me what the conversation was, to the very best of your  
11 recollection.

12 A He called and said, my understanding is he called  
13 that <sup>Contact</sup> contract had been made from Metropolitan Talc  
14 inquiring whether Johnson & Johnson had information that  
15 Metropolitan could use to defend Italian Talc from some  
16 charges. I'm not even sure he told me whether it was a  
17 lawsuit, and that's the substance of the question that he  
18 asked me, did we have information that they could use and  
19 my answer was No.

20 Q You didn't speak directly to Mr. Curran, did you?

21 A No.

22 Q Now, Mr. Bolden, in your affidavit, you state that he as  
23 an attorney employed by Johnson & Johnson and assigned to  
24 Johnson & Johnson's companies and subsidiaries dealing



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1 with talc. How many subsidiaries does Johnson & Johnson  
2 have dealing with talc?

3 A Two.

4 Q What is the other one?

5 A One is Johnson & Johnson Baby Products Company and  
6 one is Windsor Minerals, Incorporated.

7 Q Now, is Mr. Bolden Windsor Minerals' corporate counsel?

8 A Mr. Bolden is on my Board. He is in the office of  
9 the general counsel of J&J. He is on my Board as a  
10 representative of the parent corporation and is the  
11 consulting attorney to myself.

12 Q Is he in the corporate structure, is he assigned as the  
13 corporate counsel for Windsor?

14 A Yes.

15 Q You don't have any other corporate counsel, do you?


16 A No.

17 MR. LEIBENSPERGER: For this lawsuit,  
18 you mean?

19 THE WITNESS: Wait, I might not have  
20 answered that correctly. We, from time to time, in Vermont  
21 use attorneys in land acquisition matters.

22 Q They are on a case-by-case basis, you may hire an attorney  
23 to do something for you?

24 A Right.

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1 Q Mr. Miller, in a couple of contracts which have been  
2 marked as Exhibit #21 there is reference made to a talc  
3 number 23. What is that?

4 A I don't know.

5 Q Can you tell me what Exhibit #15 purports to show? It's  
6 the handwritten table of shipment years, 1942 through 1957.

7 A In going through our records, attempting to define  
8 the sales, you asked questions regarding the sales in  
9 dollars and tons from the various operations. We had  
10 very sketchy information. This piece of paper had this  
11 table of dollar value of shipments from Johnson & Johnson  
12 and it was unique because we didn't have those numbers  
13 necessarily anywhere else, so I put it in wanting to be as  
14 *inclusive* conclusive as I could.

15 Q So you prepared Exhibit #15 from the materials in the file?

16 A This was just a piece of paper in the file.

17 Q You didn't actually draw these?

18 A This is an old piece of paper that I found in the file.

19 Q Do you know whether they are dollars or tons?

20 A Yes, I'm sure they are dollars -- wait a minute, let  
21 me look at that. These Goddamn guys reported tonnages in  
22 tenths.

23 MR. LEIBENSBERGER: Off the record.

24 (OFF THE RECORD)



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1 THE WITNESS: These are dollars.

2 MR. LEIBENSPERGER: Off the record.

3 (OFF THE RECORD)

4 Q. In your answer Number 36, response Number 36 to the Inter-  
5 rogatories, the question is whether you have destroyed  
6 documents or records pertaining to a variety of categories  
7 and your response is, quote "See response to Interrogatory  
8 Number 35." In answer Number 35, you state that there  
9 was no program of retention or destruction of records or  
10 documents for the company, to your knowledge?

11 A. That is right.

12 Q. Now, does that reach back to EMT and to your knowledge of  
13 the EMT operations prior to your coming on with the firm?

14 A. To the degree I have knowledge of it, I have no know-  
15 ledge or understanding of any program.


16 Q. But the question Number 36 asks without regard to programs.  
17 Let me ask you then, without regard to your program, do  
18 you know if any documents were destroyed?

19 A. I don't know. Well, wait a minute, 36-G, the guy  
20 from Englehart told me that the floods had destroyed those  
21 sales records. These refer to the sales records.

22 MR. PRENTISS: I don't have anything  
23 further, thank you.

24 CROSS-EXAMINATION BY MR. ANDERSON

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CROSS-EXAMINATION BY MR. ANDERSON

1 Q. Has the talc that was mined from the Johnson mine ever,  
2 to your knowledge, been tested for any kind of asbestos  
3 or asbestos-like material?

4 MR. LEIBENSPERGER: Has it been tested  
5 for it or has the test resulted in it?

6 MR. ANDERSON: Has it been tested  
7 for it?

8 MR. LEIBENSPERGER: At any time?

9 MR. ANDERSON: At any time, to your  
10 knowledge, we'll say from 1945 to '67?

11 A. The information provided by the Bureau of Mines in  
12 their two reports, and by the State of Vermont, it's  
13 very closely descriptive of the mineralogical composition  
14 of that ore body and you asked me has it been tested for  
15 asbestos. All I can refer you to are those documents which  
16 on close analysis found none. Now, I have to presume,  
17 having mentioned none, they found none.


18 Q. When you say the U.S. Mine Reports, you are talking about  
19 the air samples they took that you described earlier?

20 A. Yes.

21 Q. The company has not, to your knowledge, done any testing,  
22 is that correct?

23 A. Not to my knowledge.

24 Q. And they haven't hired anybody to do any testing, is that correct?

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1 MR. LEIBENSPERGER: You're talking  
2 about what period?

3 MR. ANDERSON: '45 to '67.

4 A. Not to my knowledge.

5 Q. And your company doesn't own the Johnson Mine anymore?

6 A. No, we don't.

7 Q. Do you know if the talc at the Johnson Mine has been tes-  
8 ted after 1967 for the content of asbestos or asbestos-like  
9 material?

10 A. By presumption only I know that.

11 Q. You presume that it must have been?

12 A. I presume that it must have been because I know that  
13 their products are offered as asbestos-free.

14 Q. But you have no personal knowledge of the testing?

15 A. No, I don't.

16 Q. Do you know if the company that now owns the Johnson Mine  
17 is using the same shaft that was used from 1945 to 1967?

18 A. Yes.


19 Q. They are?

20 A. Right.

21 MR. ANDERSON: I don't have anything  
22 else.

23 MR. CURRAN: I don't have any questions.

24 CROSS-EXAMINATION BY MR. DOLAN

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CROSS-EXAMINATION BY MR. DOLAN

1 Q. In your Answer to Interrogatory Number 17, you state in  
2 17A that Windsor through EMT sold talc to Uniroyal in  
3 Providence from 1945 until 1954, and 1960 until 1961, and  
4 the records that have been introduced are your support  
5 for those statements?

6 A. My source for that information.

7 Q. Now, where did you get those records?

8 A. These were in the files of Windsor Minerals.

9 Q. But you don't know where the records are for the years,  
10 say 1904 until 1954 and 1960 or 1961 to 1965?

11 A. I know where the records are up to 1945, but I was not  
12 inquired of prior to 1945. You said 1904, that's why.

13 Q. No, 1954 to 1960 and 1961 to 1965?

14 A. I don't know where those records are.

15 Q. The other thing that was in your Answer to Interrogatories,  
16 you indicate that Johnson & Johnson from 1965 to 1967 had  
17 control of that mine, right?

18 A. Yes.

19 Q. Do you have any records from 1965 to 1967?

20 A. I have described the records that we previously produced.

21 Q. So that Johnson & Johnson has custodian of the record?

22 A. That Windsor Minerals has custodian of the records.

23 Q. What do you have for 1965 to 1967?

24 A. Correspondence. It's better to say by exclusion. We



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1 know that we transferred the sales records, the sales  
2 information, the sales correspondence, the pricing infor-  
3 mation, the descriptive materials, those things that would  
4 be a part of selling and we transferred those financial  
5 records, cost accounting records which were not part of  
6 our required retention for tax purposes.

7 Q. Where did you transfer them to?

8 A. To Englehart.

9 MR. LEIBENSPERGER: You mean Minerals  
10 and Chemicals Phillips.

11 Q. So that for those two years you are saying also those were  
12 destroyed by flood also?

13 A. When we sold the company, they required or asked us  
14 as for all their current sales, customer lists and the whole  
15 thing.

16 MR. DOLAN: That's all I have.


17 CROSS-EXAMINATION BY MR. LOVEGREEN

18 Q. Mr. Miller, you were at Eastern Magnesia in 1965, is that  
19 correct?

20 A. No, I began in 1966.

21 Q. From May 1966 until you sold a portion of the business to  
22 I will call it Phillips, do you have any recollection of  
23 sales of tale at Eastern Magnesia to Uniroyal in Providence?

24 A. No.

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1 Q. Were you involved in sales at all at that time?

2 A. No.

3 Q. Who was?

4 A. Mr. Esckilson.

5 Q. And he was the only person?

6 A. No.

7 Q. Who else was?

8 A. Lee Esckilson, H. Mailer, J. Carpenter.

9 Q. Are any of those people still working for Windsor?

10 A. No.

11 Q. Do you know where they are located at this time?

12 A. Mr. Esckilson is in Gouverneur, New York. Lee Esckilson,  
13 even his father doesn't know where he is. Howard Mailer  
14 is dead, and John Carpenter lives in Burlington, Vermont.

15 Q. And they constituted the sales force, is that correct?

16 A. That's my understanding, that is correct.

17 Q. Now, you indicated that the records from 1965 forward were  
18 given to Phillips when they purchased the northern part of  
19 the business, yet in your contracts which are Number 21,  
20 the contracts are dated and they are annual contracts, is  
21 that correct?

22 A. They are as they are. They appear to be an annual suc-  
23 cession of contracts, yes.

24 Q. You have no knowledge of these contracts yourself?



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1 A. No.

2 Q. Were there any contracts entered into between Eastern  
3 Magnesia and U.S. Rubber Company while you were at Eastern  
4 Magnesia?

5 A. Not to my knowledge.

6 Q. Do you know whether or not Exhibit 21 exhausts all of the  
7 contracts between Eastern Magnesia and United States Rub-  
8 ber Company?

9 A. I do not know, no.

10 Q. There may be other contracts around that aren't present  
11 in this particular Exhibit?

12 A. There may be. I have no knowledge of that at all.

13 Q. If they do exist, you have no knowledge of it, is that  
14 what you are saying?

15 A. Yes.

16 Q. Referring to Exhibit 11, Mr. Miller, I believe we've got  
17 the correct Number here, is that 11?


18 MR. PRENTISS: Yes. You are refer-  
19 ring to the Whittaker, Clark and Daniels ledger sheets?

20 MR. LOVEGREEN: Right.

21 Q. They appear to be for the years 1955, is that correct?

22 A. Yes, and '56, '57, '58, '59 and '60 in the bundle that I  
23 have.

24 Q. In the second bundle is '60 to '62, is that correct?

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1 A. Through July of '63.

2 Q. And the third bundle is '63 through July of '67, is that  
3 correct?

4 A. Right, yes.

5 Q. Now, in the column roughly in the middle of the page under  
6 where it says "shipped to" there are certain designations,  
7 is that correct?

8 A. Yes.

9 Q. Would it be fair for me to assume that the names indicated  
10 in that column would be the shipping destination of the  
11 products sold by you or Eastern Magnesia to Whittaker,  
12 Clark and Daniels?

13 A. I really can't make an assumption about it. I didn't  
14 have anything to do with it. I found these in the files  
15 and they have to be read as they are.

16 Q. You have no way of interpreting these documents, is that  
17 fair to say?


18 A. No, I don't have any way. Some of the information is  
19 meaningful, some of it isn't.

20 Q. Have you ever inquired of anybody regarding the interpre-  
21 tation of Exhibit 11?

22 A. No.

23 Q. Did you ever discuss this with Mr. Eschilson?

24 A. Eschilson?

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1 Q. Yes.

2 A. Yes, I discussed Whittaker, Clark and Daniels sales  
3 of Eastern Mag.

4 Q. Did you ask him where the materials or products were shipped  
5 where there is a blank on the column shipped to?

6 A. No.

7 Q. Do you know, to your own knowledge, where they were shipped  
8 to?

9 A. No, I don't.

10 Q. Do you have any person at Whittaker, Clark and Daniels  
11 that Eastern Magnesia dealt with in a sale of any talc  
12 product at any time?

13 A. No, sir, I don't.

14 MR. LOVEGREEN: That's all I have,  
15 thank you.


16 RE-CROSS-EXAMINATION BY MR. ANDERSON

17 Q. Plaintiff's Exhibit 20 for Identification, can you tell  
18 us what that document is?

19 A. Can I tell you what this is?

20 Q. Yes, do you know what it is?

21 A. I can tell you what it appears to be. This is a portion  
22 of a compilation which, it is my understanding, was pre-  
23 pared shortly after the acquisition as a document of explana-  
24 tion for the marketing and distribution of talc products

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1 from Eastern Magnesia Talc Co.

2 Q. This was prepared by Eastern Magnesia Talc Co.?

3 A. Yes, it <sup>was</sup> is. It is my understanding it was.

4 Q. On page 4?

5 A. Yes.

6 Q. Roman numeral II, second paragraph Arabic number 2-B,  
7 the rubber is described apparently as having a high iron  
8 content; is that what that refers to? I'm sorry, I mean  
9 the talc?

10 A. Come here and show me where you are talking about.

11 Q. High iron content under filler and reinforcing?

12 A. Yes.

13 Q. Do you know, to your personal knowledge, that the talc  
14 sold by Eastern Magnesia Talc Co. had a high iron content  
15 relative to other types of talc?

16 A. Yes.

17 Q. Do you know what percent iron content it had?


18 A. No.

19  
20 MR. ANDERSON: I have no further ques-  
21 tions.

22 MR. PRENTISS: I have just a couple  
23 more.

24 REDIRECT EXAMINATION BY MR. PRENTISS

Q. First, you answered Mr. Anderson by stating that the talc

  
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1           mined at Johnson utilized the one shaft?

2           A. Yes.

3           Q. For the entire period from 1945 to 1967?

4           A. That's my understanding.

5           Q. What is the basis of that understanding?

6           A. Conversations with the staff at the mine. Do you know  
7           what a shaft is?

8           Q. Only from what you have explained today.

9           A. The shaft is the primary opening through which men  
10          and materials travel and out which the ore comes. The  
11          openings of the ground are not shafts. To my knowledge,  
12          that shaft has been in use since 1945. I could be mistaken  
13          but I believe it has.

14          Q. But you did say there are two other shafts that were opera-  
15          ted at one time at the Johnson mine?

16          A. I said in the same ore body, yes. Those that became  
17          unusable, they moved over successfully and used those.

18          Q. Do you know the proximity of the shaft that you think  
19          was in operation for that entire period to the other shafts.


20          A. In a general sense, I do.

21          Q. About how far away?

22          A. Quarter of a mile.

23          Q. Back?

24          A. No.

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1 Q. Quarter of a mile?

2 A. One or two. Three were fairly close together and four  
3 was about a quarter of a mile. Two and three were very  
4 small exploratory operations.

5 Q. Two and three are the ones that you don't think have  
6 been in operation since 1945?

7 A. Yes.

8 Q. But all of them were in the same ore body?

9 A. It's my understanding that they were, yes.

10 Q. How far did the risers--

11 A. You mean the stopes.


12 Q. The stopes, the lateral extensions from the shaft go before  
13 they were exhausted and moved onto the next stope?

14 A. The mine is best viewed as a vertical deposit and  
15 the horizontal openings are in successively decreasing  
16 depth. The vertical openings could be as high as 300 feet.  
17 They pass more than one level.

18 Q. So for the shaft end of the stope to the stone end of the  
19 stope, how long would that be? Do you understand my ques-  
20 tion?

21 A. No.

22 Q. Am I correct in understanding that you have a shaft and  
23 from the shaft you have a hole that branches off of the  
24 shaft?

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1 A. No, you have horizontal openings. The shaft is <sup>steeply</sup> deeply  
2 inclined. You have a horizontal opening that goes out to  
3 the limit ore body and then you mine the panels.

4 Q. You stated-that EMT Talc had a high iron content level  
5 relative to other talcs?

6 A. Yes.

7 Q. Was that the Johnson Talc or the Hammonsville Talc or  
8 both?

9 A. Both.

10 Q. Exhibit 20, which is the portion of the compilation, do  
11 you have the rest of that compilation?

12 A. Yes.


13 Q. Would we be able to get that if we filed our request, if  
14 I make a request for the compilation prepared by EMT for  
15 Phillips Co. in connection with the transfer?

16 A. No, with J & J.

17 MR. LEIBENSPERGER: This is the first  
18 transfer from Eastern Mag. to J & J.

19 MR. PRENTISS: Do you know what I'm  
20 talking about?

21 MR. LEIBENSPERGER: I know what you're  
22 talking about. I'd have to see the request and look at  
23 the documents to see the relevance of objections, but sub-  
24 ject to that I know what you are talking about.

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1 MR. PRENTISS: Just to make it  
2 simple, we have an understanding, I will ask for the  
3 complete compilation of which Exhibit 20 for this depo-  
4 sition is a part. Thank you, I have no further questions.

5 (DEPOSITION CLOSED)

6 \* \* \* \* \*

7 C E R T I F I C A T E

8 I, Lynne S. Irons, a Notary Public in and for the State of Rhode Island,  
9 duly commissioned and qualified to administer oaths, do hereby certify that  
10 the foregoing deposition of Roger N. Miller, a Witness in the above-entitled  
11 cause, was taken by me on behalf of the Plaintiffs, pursuant to Notice, before  
12 Lynne S. Irons, a Notary Public in and for the State of Rhode Island at the  
13 offices of Deoof & Grism, One Smith Hill, Providence, Rhode Island on October  
14 29, 1982 at 1:30 P.M.; that said witness personally appeared; that prior to  
15 the testimony of said witness he was first duly sworn and cautioned to tell  
16 the truth, the whole truth, and nothing but the truth and that Roger N. Miller  
17 thereupon testified as in the foregoing annexed deposition set out.

18 I further certify that the foregoing was taken down by me in stenotype  
19 and was reduced to typewriting ; it is a true and correct copy of my notes  
20 taken at the time of the above-entitled deposition.

21 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official  
22 seal this 2<sup>nd</sup> day of November 1982.

23 *Lynne S. Irons, Notary Public*  
24 LYNNE S. IRONS, NOTARY PUBLIC / CERTIFIED COURT REPORTER

**W** Woods & Irons  
Suite 300 • 56 Washington Street  
Providence, R. I. 02903  
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# Exhibit 5

1 SUPERIOR COURT OF NEW JERSEY  
2 LAW DIVISION - MIDDLESEX COUNTY  
3 DOCKET NO. MID-1809-17AS  
4 APPELLATE DOCKET NO. \_\_\_\_\_  
5  
6 DOUGLAS AND ROSALYN BARDEN, )  
7 ) TRIAL  
8 Plaintiff, )  
9 )  
10 v. )  
11 ) (VOLUME 1 OF 2)  
12 BRENNTAG NORTH AMERICA, et al., )  
13 Defendants. )  
14 ----- )  
15 DAVID CHARLES ETHERIDGE AND )  
16 DARLENE PASTORE ETHERIDGE, ) MID-L-0932-17AS  
17 )  
18 Plaintiffs, )  
19 )  
20 v. )  
21 )  
22 BRENNTAG NORTH AMERICA, et al., )  
23 Defendants. )  
24 ----- )  
25 D'ANGELA McNEILL-GEORGE, )  
MID-L-7049-16AS  
Plaintiff, )  
v. )  
BRENNTAG NORTH AMERICA, et al., )  
Defendants. )  
----- )  
WILLIAM AND ELIZABETH RONNING, )  
MID-L-6040-17AS  
Plaintiffs, )  
v. )  
BRENNTAG NORTH AMERICA, et al., )  
Defendants. )  
Job No. NJ3446610

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Page 2

Place: Middlesex County Courthouse  
56 Paterson Street  
New Brunswick, New Jersey 08903  
  
Date: Monday, July 22, 2019  
9:24 a.m.  
(Volume 1 of 2)  
(Pages 1 - 200)  
  
Before:  
HON. ANA C. VISCOMI, J.S.C.,  
  
TRANSCRIPT ORDERED BY:  
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WITNESS: JOHN HOPKINS

DIRECT EXAMINATION BY MR PANATIER

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Page 3

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Page 5

THE COURT: Good morning, Dr.  
Hopkins.  
THE WITNESS: Good morning, your  
Honor.  
(Sidebar.)  
THE COURT: So we are at sidebar and  
we began argument on Friday. I think all the  
arguments were in relative to --  
(There is a discussion off the  
record.)  
THE COURT: I don't know. Was there  
additional argument that counsel wanted to make or  
are we done with argument? (INAUDIBLE.)  
MS. SULLIVAN: And just to emphasize,  
your Honor, Evidence Rule 701 and lay opinion from  
fact witnesses can be permitted, if it's consistent  
with your experience in product -- particularly, in  
product liability case.  
And, specifically, citing the  
Appellate Division's decision in Navarro v. George  
Koch & Sons, 512 -- I'm sorry, 211 N.J. Super. 558  
and, actually, the Court held it might be reversible  
to not permit that kind of testimony.  
MR. MAIMON: Just a moment, your  
Honor.

<p style="text-align: right;">Page 6</p> <p>1 THE COURT: Sure.</p> <p>2 MR. MAIMON: So Rule 701 does allow</p> <p>3 lay opinion testimony. But that has to be based on</p> <p>4 the perception of the witness. And so the classic</p> <p>5 example is that a witness can say how fast was a car</p> <p>6 going but, for instance, the Appellate Division and</p> <p>7 the Supreme Court has held that it would be error to</p> <p>8 let a police officer say the car was going so fast</p> <p>9 and the car was speeding based on the statements of</p> <p>10 others because that's just a vehicle to admit</p> <p>11 hearsay. And I'm just looking at the commentary on</p> <p>12 Rule 701.</p> <p>13 Very clearly, the commentary makes</p> <p>14 that a nonexpert may give his opinions on matters of</p> <p>15 common knowledge and observation but not on areas</p> <p>16 that would usurp the function of expert opinion.</p> <p>17 The discussion of products liability</p> <p>18 cases has been restricted to people who were</p> <p>19 involved in the design so that the designers of</p> <p>20 products such as a chair, and that's the Navarro</p> <p>21 case, could say that providing an undersized chair,</p> <p>22 this is the reason it was designed that way, so</p> <p>23 that's somewhat of an opinion, but it's not an</p> <p>24 opinion where it goes to the product defect. It's</p> <p>25 not an opinion that's an expert opinion. It's</p>	<p style="text-align: right;">Page 8</p> <p>1 had personal knowledge.</p> <p>2 THE COURT: Okay. So here where this</p> <p>3 is going to come in is the whole issue with his</p> <p>4 cross-examination and so I previously ruled so</p> <p>5 there's no personal use testimony coming in.</p> <p>6 There's no expert testimony going to come in because</p> <p>7 he's not an expert. There is no hearsay testimony</p> <p>8 coming in unless it meets one of the exceptions.</p> <p>9 With regard to this whole area, I</p> <p>10 believe, this is going to -- from what you've --</p> <p>11 Counsel advised really kind of come up during</p> <p>12 cross-examination of the witness.</p> <p>13 So I've previously allowed testimony</p> <p>14 within, I believe, the confines of 602 and 701. We</p> <p>15 have to remember his role at the company was as the</p> <p>16 head of product safety for the time period that he</p> <p>17 was there. And so if it's within his personal</p> <p>18 knowledge in that role, the Court will allow that</p> <p>19 testimony.</p> <p>20 This is going to be the situation</p> <p>21 where, I mean, Counsel, if you feel that he's going</p> <p>22 outside that role and not testifying within his</p> <p>23 personal knowledge, then we can come to sidebar.</p> <p>24 MR. PANATIER: Yes, your Honor.</p> <p>25 THE COURT: Okay?</p>
<p style="text-align: right;">Page 7</p> <p>1 opinion within not only the knowledge but the</p> <p>2 perception of somebody. And I think that we get --</p> <p>3 we get confused when we say that a person's personal</p> <p>4 knowledge is based on what other people have told</p> <p>5 them. And our courts have said that the party</p> <p>6 opponent exception is -- is allowed to have those</p> <p>7 statements. But the same way in which we could</p> <p>8 offer in the Answers to Interrogatories of Johnson &amp;</p> <p>9 Johnson, they could not offer in their own Answers</p> <p>10 to Interrogatories.</p> <p>11 We could offer the corporate</p> <p>12 representative deposition of Johnson &amp; Johnson. The</p> <p>13 rule on admissibility of depositions makes it clear</p> <p>14 as well as the case law they could not offer their</p> <p>15 own. And so we do not believe that Dr. Hopkins can</p> <p>16 offer any opinions where he lacks personal</p> <p>17 knowledge.</p> <p>18 MS. SULLIVAN: And, your Honor, just</p> <p>19 to follow up on the Navarro case, it wasn't the</p> <p>20 chair case. It actually involves the design of</p> <p>21 latches and the Court held that the employee there</p> <p>22 who was familiar with design manufacturer testing</p> <p>23 issues should be able to testify consistent with his</p> <p>24 knowledge and experience with the company.</p> <p>25 MR. PLACITELLA: And that employee</p>	<p style="text-align: right;">Page 9</p> <p>1 MR. MAIMON: Understood.</p> <p>2 MS. SULLIVAN: Yes, your Honor.</p> <p>3 THE COURT: Thank you.</p> <p>4 MR. MAIMON: Thank you, your Honor.</p> <p>5 (Sidebar ends.)</p> <p>6 THE COURT: So let's get the Jurors</p> <p>7 in. Everything is working here now.</p> <p>8 I'll step out so we can bring in the</p> <p>9 Jurors.</p> <p>10 (Recess taken 9:32 a.m.)</p> <p>11 (Jury enters.)</p> <p>12 THE COURT: Good morning. Please be</p> <p>13 seated. Make sure cell phones are turned off.</p> <p>14 Officer, you can just give the envelopes to the</p> <p>15 Jurors, they'll pass them around to the correct</p> <p>16 individuals.</p> <p>17 THE WITNESS: May I approach?</p> <p>18 THE COURT: Yes, please. Have a</p> <p>19 seat, Dr. Hopkins.</p> <p>20 Good morning, everyone. Today is</p> <p>21 July 22, 2019. This is the trial in the matter of</p> <p>22 Douglas and Rosalyn Barden versus Johnson &amp;</p> <p>23 Johnson -- Counsel, you may be seated -- Darlene and</p> <p>24 David Etheridge versus Johnson &amp; Johnson, D'Angela</p> <p>25 McNeill versus Johnson &amp; Johnson and William and</p>

<p style="text-align: right;">Page 10</p> <p>1 Elizabeth Ronning versus Johnson &amp; Johnson. 2 May I have appearances please for 3 the Plaintiffs. 4 MR. MAIMON: Thank you, your Honor. 5 Good morning. Good morning, everyone. Moshe 6 Maimon, Chris Panatier and Chris Placitella for the 7 Bardens, the Etheridges, the Ronnings and Ms. 8 McNeill. 9 THE COURT: Thank you. 10 And on behalf of the Defendant, 11 Johnson &amp; Johnson and Johnson &amp; Johnson Consumer, 12 Incorporated. 13 MS. SULLIVAN: Thank you, your Honor, 14 good morning. Hi, Jurors. Good morning, everyone. 15 Diane Sullivan and Jack Nolan for J&amp;J. 16 MR. NOLAN: Good morning. 17 THE COURT: Welcome back, Members of 18 the Jury. As you may recall, we have not finished 19 the testimony of Dr. Compton who started his 20 testimony on Friday. Similarly, we have not 21 completed the testimony of Dr. Webber. 22 In order to accommodate witnesses' 23 schedule, we're now going to move to a different 24 witness. 25 Plaintiffs may call their next</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. PANATIER: And there's already a 2 binder there and I've provided Counsel with a binder 3 of Dr. Hopkins's prior testimony. And we'll be 4 tendering exhibits to Defense Counsel as they come. 5 Dr. Hopkins has an exhibit binder there. And here 6 is... 7 THE COURT: Thank you. 8 MR. PANATIER: There may be more 9 volumes but we're going to start on Volume 1. 10 DIRECT EXAMINATION BY MR. PANATIER: 11 Q. Good morning, everybody. 12 So please introduce yourself. 13 A. John -- yes, John Hopkins. 14 Q. Okay. Now, you are here as the 15 corporate representative for Johnson &amp; Johnson and 16 Johnson &amp; Johnson Consumer, Inc., correct? 17 A. Yes. 18 Q. You don't work for us, we have not 19 paid you to come here and testify, correct? 20 A. That is correct. 21 Q. Alright. You currently do not work 22 for Johnson &amp; Johnson, correct? 23 A. Correct. 24 Q. You are a consultant? 25 A. Correct.</p>
<p style="text-align: right;">Page 11</p> <p>1 witness. 2 MR. PANATIER: Thank you, your Honor. 3 At this time Plaintiffs call the 4 corporate representative of Johnson &amp; Johnson, John 5 Hopkins, who is already standing at the witness 6 stand. 7 DR. HOPKINS: Thank you. Good 8 morning, Jury. Good morning, your Honor. 9 THE COURT: Good morning. 10 Could you please remain seated, 11 Dr. Hopkins, momentarily, while you are administered 12 the oath. If you could remain standing, I'm sorry. 13 If I said "seated," I apologize. 14 THE CLERK: State your full name and 15 spell your last name, please. 16 THE WITNESS: John Hopkins, 17 H-O-P-K-I-N-S. 18 J O H N H O P K I N S, SWORN. 19 THE COURT: Officer, if you could 20 just remove the bible from there. 21 Please be seated. Thank you. 22 MR. PANATIER: And, your Honor, just 23 by way of organization, I have a testimony binder. 24 Can I give this to your Honor? 25 THE COURT: Yes, please.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. And the last year that you worked at 2 Johnson &amp; Johnson was, approximately, 2000? 3 A. Correct. 4 Q. So, since 2000, you have been a 5 consultant, a paid consultant, right? 6 A. Yes. 7 Q. To Johnson &amp; Johnson and its other 8 companies, right? 9 A. To Johnson &amp; Johnson, yes. 10 Q. Well, here, for instance, you're 11 being paid by both Johnson &amp; Johnson and Johnson &amp; 12 Johnson Consumer, Inc., even though you might get 13 just one check; fair? 14 A. Fair. 15 Q. Okay, alright. And what is the rate 16 that you are charging them per hour? 17 A. My company bills my time at 300 US 18 per hour. 19 Q. Now, you've said your company. 20 Your company is a company that you run with 21 your wife, correct? 22 A. Yes, and we employ some people as 23 well, yes. 24 Q. Alright. How many people do you 25 employ?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. Besides my wife and myself, there's 2 two full-time and one part-time. 3 Q. So the two full-time are you and your 4 wife and one part-time? 5 A. No. Besides my wife and myself, two 6 full-time and one part-time. 7 Q. That company is called Innova? 8 A. Innovant Research Limited, yes. 9 Q. Okay. And that is the company that 10 then bills for your time and then pays you? 11 A. Correct. 12 Q. Okay. So, even though you are not 13 currently an employee of Johnson &amp; Johnson, you are 14 the face of Johnson &amp; Johnson at this trial. Do you 15 understand that? 16 A. I am today, yes. 17 Q. And do you understand that what you 18 say are the words of Johnson &amp; Johnson, correct? 19 A. Yes. 20 Q. You have served in this capacity on, 21 can we say, numerous occasions now? 22 A. Yes. 23 Q. In fact, next week you're going to 24 Kentucky to do it again, correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. And they still sell -- they sell it 2 worldwide, correct? 3 A. Yes. 4 Q. Until about the early 1960s, the talc 5 that was used in Johnson &amp; Johnson's Baby Powder was 6 Italian talc for the most part, right? 7 A. Until around about '67, yes. 8 Q. It was Italian? 9 A. It was from a mine in Italy, yes. 10 Q. The Val Chisone region, correct? 11 A. The Fontana mine in the Val Chisone 12 region, a particular mine, yes. 13 Q. Prior to 1967 or some time in the 14 '30s and '40s, they also used some domestic talcs 15 and California talc, correct? 16 A. The only time it used domestic was 17 during the war when Nazi u-boats were sinking 18 shipments going from Italy. That was around about 19 from 1941 to end of '45. So there was that time 20 window when a domestic source was being used. 21 Q. The Nazis were looking for the talc 22 boats and sinking the talc boats? 23 A. The Nazis were sinking all boats. 24 Q. Okay. And they used California talc 25 during the '40s, correct?</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. You've already testified this year 2 several times in the same capacity at trial; isn't 3 that true? 4 A. Yes. 5 Q. You have done it last year at trial 6 several times, correct? 7 A. Yes. 8 Q. And the year before? 9 A. Yes. 10 Q. Now, let's talk a little -- let's get 11 our bearings a little bit about Johnson &amp; Johnson 12 and baby powder. 13 Now Johnson &amp; Johnson started selling 14 baby powder in the 1800s, correct? 15 A. 18 -- 1894, as I recollect, yes. 16 Q. In fact, they were giving it away in 17 maternity kits, right? 18 A. Originally, no, it was sold where 19 they -- a large giant dis-bandage to take away an 20 irritation and then later it became a mom's product. 21 Q. That's fine. 22 At some point early on they were putting the 23 Johnson's Baby Powder into maternity kits in 24 hospitals, correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 17</p> <p>1 A. That is my understanding. A 2 particular -- I don't know which mine, but a 3 particular California talc was used during the war, 4 during World War II. 5 Q. Does the Grantham mine, a mine sound 6 familiar to you? 7 A. The Grantham mine was a mine that was 8 evaluated but never used by Johnson &amp; Johnson in the 9 1970s. I have no... 10 Q. You don't believe Grantham was ever 11 used prior to -- 12 A. No. There's no evidence whatsoever 13 that Grantham was ever used and it has ever been 14 used. It was evaluated briefly during the early 15 1970s along with 50 other mines as an alternative 16 source of domestic talc. None of those were ever 17 approved, including the Grantham mine. 18 Q. Okay. We'll come back to the '40s 19 then. We don't have anybody who was exposed in the 20 '40s here, so we might just address it briefly. 21 After '67, Johnson &amp; Johnson had 22 purchased a mine in Vermont, correct? 23 A. They did, yes. 24 Q. Well, they purchased it prior to 25 1967, right?</p>

<p style="text-align: right;">Page 18</p> <p>1 A. They did, yes.</p> <p>2 Q. And they ran --</p> <p>3 A. Three or four years before.</p> <p>4 Q. Okay. And they ran that mine through</p> <p>5 a company called Windsor Minerals, right?</p> <p>6 A. The company that purchased the mine</p> <p>7 was a subsidiary of Johnson &amp; Johnson. It was</p> <p>8 purchased, I think, around about 1964, Windsor</p> <p>9 Minerals did. And it was not actually fully</p> <p>10 approved and set in motion as a baby talc source</p> <p>11 until the mid '60s, '67 and it was phased in and</p> <p>12 Italian talc was phased out. But the company that</p> <p>13 owned the mine was a subsidiary called Windsor</p> <p>14 Minerals.</p> <p>15 Q. Right. And Johnson &amp; Johnson used</p> <p>16 the Vermont sourced talc for its -- all of its</p> <p>17 domestic talc in the United States from,</p> <p>18 approximately, 1967 or so until 2003; is that</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Alright. Now, there was some overlap</p> <p>22 with the Italian talc and the Vermont talc, correct?</p> <p>23 A. Yes. One was phased in and the other</p> <p>24 was phased out during the 1967, '68 time frame.</p> <p>25 Q. Okay. In 1980 there was a mine</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. And in 2012, we all know the Shower</p> <p>2 to Shower product, that was sold by Johnson &amp;</p> <p>3 Johnson to a company called Valeant, right?</p> <p>4 A. It was, yes.</p> <p>5 Q. So Johnson &amp; Johnson no longer owns</p> <p>6 the Shower to Shower product line, right?</p> <p>7 A. Not since 2012, no.</p> <p>8 Q. It, obviously, still owns Johnson's</p> <p>9 Baby Powder, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Johnson &amp; Johnson Corporate in New</p> <p>12 Brunswick made all health and safety policy</p> <p>13 decisions with regard to asbestos and talc products,</p> <p>14 correct?</p> <p>15 A. The -- yes, the company in New Jersey</p> <p>16 is the parent company for all the global companies</p> <p>17 made those decisions, yes.</p> <p>18 Q. And testing results between Johnson &amp;</p> <p>19 Johnson and, for instance, Johnson &amp; Johnson</p> <p>20 Consumer, Inc., which I'm just going to call JJCI,</p> <p>21 test results, health and safety information were</p> <p>22 freely exchanged between those two companies,</p> <p>23 correct?</p> <p>24 A. I've not seen any evidence that it</p> <p>25 was not. So, I guess, the answer is going to be,</p>
<p style="text-align: right;">Page 19</p> <p>1 strike in Vermont, correct?</p> <p>2 A. There was. And that was December</p> <p>3 1980 and the mine was closed, so for about three</p> <p>4 months until February '81.</p> <p>5 Q. Are you sure it wasn't --</p> <p>6 A. Sorry.</p> <p>7 Q. -- December 1979?</p> <p>8 A. Sorry. December 1979 there was a</p> <p>9 mine strike which ran into -- from 1980, January,</p> <p>10 February, it was sourced from Italy.</p> <p>11 Q. Right. And they went back to the</p> <p>12 00000 Italian Val Chisone talc?</p> <p>13 A. Which is the same talc that they were</p> <p>14 using in Europe at the same time, yes.</p> <p>15 Q. After 2003 all the talc that's been</p> <p>16 sourced for Johnson's Baby Powder and Shower to</p> <p>17 Shower sold here in the US is China, Guangxi,</p> <p>18 correct?</p> <p>19 A. There is a mine in China, the Guangxi</p> <p>20 mine, which is a, like a high grade cosmetic talc,</p> <p>21 yes.</p> <p>22 Q. Johnson &amp; Johnson owned the Vermont</p> <p>23 mine until 1989 when it sold it to a company called</p> <p>24 Cyprus, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 21</p> <p>1 yes. But I've not seen evidence that anything was</p> <p>2 withheld.</p> <p>3 Q. Right. Because you wouldn't want</p> <p>4 Johnson &amp; Johnson getting health and safety</p> <p>5 information that was important to the products being</p> <p>6 made and sold by JJCI and not given to them,</p> <p>7 correct?</p> <p>8 A. Correct, yes. Like I say, I've not</p> <p>9 seen evidence that it was ever -- there was any ever</p> <p>10 data withheld.</p> <p>11 Q. In fact, the evidence you've seen is</p> <p>12 that any evidence -- any health and safety</p> <p>13 information that Johnson &amp; Johnson had was given to</p> <p>14 JJCI and vice versa, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Now, you have reviewed many thousands</p> <p>17 of documents, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And in this litigation, this talc</p> <p>20 asbestos litigation, you have reviewed, I think,</p> <p>21 you've told me, 10 to 15,000 documents?</p> <p>22 A. I guess it is, yes, yes.</p> <p>23 Q. Now, you know that Johnson &amp; Johnson</p> <p>24 has turned over around a million documents in this</p> <p>25 litigation, correct?</p>

<p style="text-align: right;">Page 22</p> <p>1 A. So you tell me, yes.</p> <p>2 Q. Well, so my question is -- so I'm a</p> <p>3 lawyer, right? Well, presumably.</p> <p>4 A. I'll give you that.</p> <p>5 Q. Okay. I don't work at Johnson &amp;</p> <p>6 Johnson as far as you know, do I?</p> <p>7 A. Correct.</p> <p>8 Q. The best person to tell us whether or</p> <p>9 not you've looked at all the documents would be</p> <p>10 Johnson &amp; Johnson, right?</p> <p>11 A. Yes.</p> <p>12 Q. And that's you?</p> <p>13 A. Yes.</p> <p>14 Q. So have you looked at all their</p> <p>15 documents?</p> <p>16 A. I've not looked at a million</p> <p>17 documents. I reckon I've looked at between 10 and</p> <p>18 15,000, which from my understanding are pertinent to</p> <p>19 the topic we're talking about today; in other words,</p> <p>20 the documents that support the safety of talc.</p> <p>21 Q. Now, some of the questions we heard</p> <p>22 last week of our experts were, they got the</p> <p>23 documents from us, from the lawyers, okay.</p> <p>24 Didn't you get the documents from the</p> <p>25 Johnson &amp; Johnson lawyers?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Okay. And if you can turn please,</p> <p>2 sir, to Page 18. Are you there?</p> <p>3 A. We have it, yes.</p> <p>4 Q. Alright. On Line 6, starting on</p> <p>5 Line 6 you were asked this. "In the year and a half</p> <p>6 since I first -- or not year and a half. In the</p> <p>7 13 months since I first deposed you in August of</p> <p>8 2017, do you know whether you've looked at all the</p> <p>9 documents?"</p> <p>10 Your answer was, "Since 2017 I've looked at</p> <p>11 many many thousands of documents, many binders, each</p> <p>12 four or five inches thick.</p> <p>13 Okay. And you continue.</p> <p>14 I've certainly gone through many, many</p> <p>15 thousands of documents. I've looked -- have I</p> <p>16 looked at every one? I don't know. But I've looked</p> <p>17 at every one that was provided to and by the</p> <p>18 attorneys which were considered relevant to the</p> <p>19 cases in question."</p> <p>20 My follow-up question, "Well, just a</p> <p>21 minute ago you said 'hundreds'; is it thousands?</p> <p>22 Answer: It's many thousands. I can see in</p> <p>23 my office several binders. Each may be four inches</p> <p>24 thick and there are many of those. So it must run</p> <p>25 into the thousands, yes."</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Not necessarily. As part of my job</p> <p>2 when I first joined the company in 1976, I met with</p> <p>3 the then medical director, Dr. Semple, and he</p> <p>4 regularly appraised me of the history because I was</p> <p>5 the only toxicologist outside of the United States.</p> <p>6 So I was responsible for Europe. And he apprised me</p> <p>7 of the recent history of talc, talc safety and talc</p> <p>8 issues in the early '70s, late '60s, early '70s.</p> <p>9 And we went through several binders of documentation</p> <p>10 that Dr. Semple reviewed with me to get me up to</p> <p>11 speed. So not all of those, certainly, did not come</p> <p>12 from the attorneys.</p> <p>13 I was -- had a whole file of those in my</p> <p>14 office in the UK, right back from the mid '70s.</p> <p>15 Q. So, if you will turn -- there is the,</p> <p>16 I believe, the black notebook there.</p> <p>17 A. Uh-huh.</p> <p>18 Q. That one should have some of your</p> <p>19 past testimony in it.</p> <p>20 A. Okay.</p> <p>21 Q. Okay. If you would turn to the page</p> <p>22 marked 2018-10-23. So they're in date order from</p> <p>23 earliest to latest and there is a deposition in</p> <p>24 there that is 2018-10-23.</p> <p>25 A. It's in the middle, okay.</p>	<p style="text-align: right;">Page 25</p> <p>1 And my last question there. "Did you</p> <p>2 receive the binders there from the Johnson &amp; Johnson</p> <p>3 lawyers?</p> <p>4 Answer: Yes."</p> <p>5 Was that all read correctly?</p> <p>6 A. Yes. One does not exclude the other.</p> <p>7 Q. Let me ask you this question.</p> <p>8 As the person who is the embodiment of</p> <p>9 Johnson &amp; Johnson here and as the person who has</p> <p>10 done this numerous times over the past couple of</p> <p>11 years, do you have freedom to go through Johnson &amp;</p> <p>12 Johnson's database to look at the documents?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And how often have you done</p> <p>15 that?</p> <p>16 A. Very simply, let's look at this in</p> <p>17 the --</p> <p>18 Q. Can you answer the question? How</p> <p>19 often have you done that?</p> <p>20 MS. SULLIVAN: Your Honor, I'm going</p> <p>21 to object to interrupting the witness in the middle</p> <p>22 of an answer.</p> <p>23 THE COURT: You can answer the</p> <p>24 question, Dr. Hopkins.</p> <p>25 THE WITNESS: I will, your Honor,</p>

<p style="text-align: right;">Page 26</p> <p>1 yes.</p> <p>2 A. I have not had the occasion to</p> <p>3 because I have many thousands of documents which</p> <p>4 together provide me with the data that I need to</p> <p>5 answer any question you may have.</p> <p>6 Q. Do you -- I'm sorry, did you say that</p> <p>7 the "many thousand of documents" you looked at have</p> <p>8 given you the information to answer all the</p> <p>9 questions I might have?</p> <p>10 A. That is my understanding, yes. I'm</p> <p>11 not aware --</p> <p>12 Q. How do you know that?</p> <p>13 A. Because the documentation I have is a</p> <p>14 very complex and full record and story that tells</p> <p>15 that the story of the evaluation of talc, all the</p> <p>16 various experts who are looking at it, the</p> <p>17 correspondence with the Food and Drug Administration</p> <p>18 here in the United States.</p> <p>19 I have a -- I have binders and binders of</p> <p>20 these in my office in the UK. I don't think there's</p> <p>21 any more that I don't have.</p> <p>22 Q. Okay. Do you even know whether you</p> <p>23 looked at 1 percent of all the documents that have</p> <p>24 been turned over by Johnson &amp; Johnson in this</p> <p>25 litigation?</p>	<p style="text-align: right;">Page 28</p> <p>1 and there about six or eight people copied in on it.</p> <p>2 Did I get each of those six or eight</p> <p>3 people's? No, I got one copy and that was identical</p> <p>4 no doubt to each of the copies that the other six or</p> <p>5 eight people got.</p> <p>6 So we look in a scenario where many</p> <p>7 of those 990,000 or whatever it may be are totally</p> <p>8 redundant. They're duplicates.</p> <p>9 Q. If you haven't looked at them, how</p> <p>10 can you testify to this jury that they're</p> <p>11 "duplicates"?</p> <p>12 A. What I can say is that if you look at</p> <p>13 any of those documents in here, you will see that</p> <p>14 there's half a dozen, six, eight, ten different</p> <p>15 people copied in on the same document. Each of</p> <p>16 those people will have had their own file and that</p> <p>17 can well be part of your million documents.</p> <p>18 What I'm saying is that the 10 or 15,000</p> <p>19 that I have reviewed provides me with enough</p> <p>20 information to answer any question you may have.</p> <p>21 Q. I'm sure there are some duplicates.</p> <p>22 You and I have probably looked at duplicates before,</p> <p>23 right?</p> <p>24 A. Yeah. There's often ten people</p> <p>25 copied in on the same document.</p>
<p style="text-align: right;">Page 27</p> <p>1 A. I believe I've looked at -- I say</p> <p>2 between 10 and 15,000, which I don't know what</p> <p>3 percent that is, because I don't know whether that</p> <p>4 million that you talk about are even relevant. They</p> <p>5 may be comments from someone. I visited someone</p> <p>6 last week and this is what we talked about. I don't</p> <p>7 know that's relevant. That could be part of the</p> <p>8 million.</p> <p>9 What I am saying is that the 10 to</p> <p>10 15,000 that I've looked at provide me with the</p> <p>11 evidence to say this product is safe and I can</p> <p>12 answer any question you may have.</p> <p>13 Q. Well, first of all, 10,000 documents</p> <p>14 would be 1 percent of a million, right?</p> <p>15 A. Yeah.</p> <p>16 Q. Okay. And how can you know whether</p> <p>17 or not the other 990,000 documents are relevant, if</p> <p>18 you haven't looked at them?</p> <p>19 A. Well, like I say, if you have a</p> <p>20 situation where you've got the information, I have</p> <p>21 the information. Getting duplicates or replicates</p> <p>22 of the same ones from -- where three or four people</p> <p>23 or five or six people are copied in, do I get all of</p> <p>24 their individual copies? If one suffices. Because</p> <p>25 that's very often the case, that you send a document</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Is it your testimony here under oath</p> <p>2 that the other 990,000 documents are all duplicates</p> <p>3 of the first 10,000?</p> <p>4 A. The answer is, I do not know. What I</p> <p>5 have told you is of the 10 or 15,000 --</p> <p>6 MR. PANATIER: Your Honor, I'm just</p> <p>7 going to object to nonresponse. He answered but he</p> <p>8 did not --</p> <p>9 MS. SULLIVAN: Your Honor, I'm going</p> <p>10 to object to the objection, to the interruption.</p> <p>11 Also, this has been covered.</p> <p>12 THE COURT: Let's move on. Thank</p> <p>13 you.</p> <p>14 BY MR. PANATIER:</p> <p>15 Q. Let me ask you this question.</p> <p>16 Has Johnson &amp; Johnson put all of those</p> <p>17 documents on-line for the public to see?</p> <p>18 A. I don't know.</p> <p>19 Q. You don't know?</p> <p>20 A. I mean, you have documents that</p> <p>21 are -- many are attorney/client privileged, you'll</p> <p>22 have copies of those. If you've been given a</p> <p>23 million documents, then you have those. And they're</p> <p>24 between you and the company.</p> <p>25 Q. So you don't know if the documents</p>

<p style="text-align: right;">Page 30</p> <p>1 have been put on-line by Johnson &amp; Johnson's for all 2 people to see?</p> <p>3 A. I don't know whether they have or 4 whether they have not. What I can say is that I 5 have read probably between 10 and 15,000, which are 6 pertinent to the topic we're talking about. Whether 7 the other --</p> <p>8 Q. I'm not asking you about that 9 anymore. Now I'm asking you about something 10 specific.</p> <p>11 You don't know whether or not Johnson 12 &amp; Johnson has put those documents on-line for all to 13 see, do you?</p> <p>14 A. No.</p> <p>15 Q. Because we have heard that -- you 16 know Ms. Sullivan, right, correct?</p> <p>17 A. Yes, I know Ms. Sullivan.</p> <p>18 Q. Ms. Sullivan has put you on the stand 19 before, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Did Ms. Sullivan tell you that she 22 told this jury that Johnson &amp; Johnson's documents 23 were free for all to see on-line? Did you even know 24 that that existed?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 32</p> <p>1 A. You have, yes. You have, yeah.</p> <p>2 Q. And Johnson &amp; Johnson was aware of 3 asbestos disease going back to the turn of the last 4 century, correct?</p> <p>5 A. When you say, "Johnson &amp; Johnson," 6 there are no doubt people in the medical department 7 who got a medical training or a toxicology training 8 who worked in the medical department who would have 9 knowledge of asbestos toxicology --</p> <p>10 Q. Sure. And Johnson &amp; Johnson --</p> <p>11 A. -- whenever -- worldwide.</p> <p>12 Q. Yes. And Johnson &amp; Johnson was aware 13 that in the 1930s, asbestos was associated with 14 cancer, correct?</p> <p>15 A. I'm sure there were individuals in 16 the medical department who would have that knowledge 17 as part of their medical training.</p> <p>18 Q. And you've testified before, sir, 19 that the knowledge of asbestos inhalation as a cause 20 of lung cancer and mesothelioma was known way before 21 1968, correct?</p> <p>22 A. Yeah, as a toxicologist, you're 23 taught that people who worked in World War I and gas 24 mask manufacturing, it was not a healthy profession.</p> <p>25 Q. Okay. But it wasn't just "gas</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. To the extent that it does, can you 2 tell us when they put them on-line?</p> <p>3 A. Well, like I say, you're telling me 4 or asking me something that I do not have knowledge 5 of. So I cannot answer that question.</p> <p>6 Q. Johnson &amp; Johnson had a big medical 7 library, right?</p> <p>8 A. They had a library, yes, certainly, 9 when I was working there.</p> <p>10 Q. They had subscriptions to journals 11 like Journal of the American Medical Association, 12 right?</p> <p>13 A. We did, yes.</p> <p>14 Q. New England Journal of Medicine 15 right?</p> <p>16 A. Uh-huh, yep.</p> <p>17 Q. The Lancet --</p> <p>18 A. Yes.</p> <p>19 Q. -- right?</p> <p>20 The New York Academy of Sciences, correct?</p> <p>21 A. Probably, yes. I can't remember that 22 one but, yes.</p> <p>23 Q. And I'll tell you for most of these, 24 if you want to see your testimony, I've asked you 25 these questions before.</p>	<p style="text-align: right;">Page 33</p> <p>1 masks," was it?</p> <p>2 A. Well, that was -- I gave that as one 3 example of why people are aware that asbestos is not 4 a healthy material.</p> <p>5 Q. Johnson &amp; Johnson being already a 6 large company in the 1960s was well aware of the 7 hazard of asbestos, correct?</p> <p>8 A. I'm sure that there were one or two 9 medically qualified individuals, as we said, in the 10 medical department who would have had that 11 knowledge. Johnson &amp; Johnson has not been in the 12 asbestos business, so it would not be widely 13 disseminated throughout the whole company.</p> <p>14 Q. Well, Johnson &amp; Johnson has patented 15 asbestos containing products, correct?</p> <p>16 A. An individual has patented, I 17 believe, it was an ironing board cover, which was -- 18 -- yeah, or something like that, but it was not part 19 -- it was never sold. The company has not sold 20 asbestos products.</p> <p>21 Q. You and I have gone through about 22 four patents that Johnson &amp; Johnson patented 23 asbestos-containing products before, have we not?</p> <p>24 A. We have and there were people in the 25 surgical dressings division who were looking at</p>

<p style="text-align: right;">Page 34</p> <p>1 asbestos materials as heat resistant, yes.</p> <p>2 Q. Now, let's talk about baby powder.</p> <p>3 Johnson &amp; Johnson understands -- first of</p> <p>4 all, talc is a mineral, is it not?</p> <p>5 A. Talc is a mineral. It's mined out</p> <p>6 the ground, yes.</p> <p>7 Q. Correct. And Johnson &amp; Johnson,</p> <p>8 actually, had their own mine and they mine and they</p> <p>9 mined it out of the ground, correct?</p> <p>10 A. They did, yes.</p> <p>11 Q. Okay. Baby powder, when it is used</p> <p>12 on a baby, okay, that baby will inhale some of that</p> <p>13 talc, correct?</p> <p>14 A. It's theoretically possible. If you</p> <p>15 put the powder on your hand and run it on baby's</p> <p>16 bottom, it's theoretically possible.</p> <p>17 Q. Will you turn please, sir, to the tab</p> <p>18 that is 2017, 8/15. It should be the first tab.</p> <p>19 Because, sir, it's not</p> <p>20 "theoretically possible," right, it happens,</p> <p>21 correct?</p> <p>22 A. Show me where you're referring.</p> <p>23 Q. Page 66.</p> <p>24 MS. SULLIVAN: I'm sorry, which page?</p> <p>25 MR. PANATIER: I'm sorry, hold on one</p>	<p style="text-align: right;">Page 36</p> <p>1 Your answer, "Yes."</p> <p>2 "I mean, it happens?"</p> <p>3 Your answer, "It happens, yes."</p> <p>4 Do you still agree with your prior</p> <p>5 testimony?</p> <p>6 A. Yes, that's what I said. It's a</p> <p>7 possibility.</p> <p>8 Q. By the way, that was the Herford</p> <p>9 case, right?</p> <p>10 A. Yeah, probably.</p> <p>11 Q. If you could just look at the cover</p> <p>12 page.</p> <p>13 A. Yes.</p> <p>14 Q. Sir --</p> <p>15 A. Yes.</p> <p>16 Q. -- baby powder is an extremely dusty</p> <p>17 product, correct?</p> <p>18 A. I disagree. It's not "dusty." You</p> <p>19 put it on your hands, it spreads all over your skin.</p> <p>20 It doesn't -- you're not getting clouds of dust.</p> <p>21 Q. So, for any of us who have done this</p> <p>22 with a squeeze, that squeezing motion --</p> <p>23 A. You're not meant to do that. You're</p> <p>24 meant to put it on your hand and spread it on the</p> <p>25 kin.</p>
<p style="text-align: right;">Page 35</p> <p>1 second.</p> <p>2 BY MR. PANATIER:</p> <p>3 Q. It is going to be Page 67, sorry,</p> <p>4 bottom of the page, Line 25.</p> <p>5 A. Sorry. Would you give me the</p> <p>6 reference again?</p> <p>7 Q. Yes, sir.</p> <p>8 A. 2017...</p> <p>9 Q. This is 2017, 8/15, August 15, 2017.</p> <p>10 That's when I came to London to take your</p> <p>11 deposition. Do you remember that?</p> <p>12 A. Yes. So Page 60...</p> <p>13 Q. Seven.</p> <p>14 A. We have that, yes.</p> <p>15 Q. Okay. Down at Line 25. Sir --</p> <p>16 sorry, have you found it?</p> <p>17 A. Yes.</p> <p>18 Q. "Sir, Johnson &amp; Johnson has</p> <p>19 understood for decades that when talc powder is used</p> <p>20 on an infant or a child, they will inhale some of</p> <p>21 the talc into their lungs?"</p> <p>22 Your answer, "there is always the</p> <p>23 possibility when talc is used, we will inhale talc."</p> <p>24 My question, "and it's not really a</p> <p>25 possibility, right?"</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Oh, does the bottle say, don't</p> <p>2 squeeze it?</p> <p>3 A. The bottle tells you how to use it.</p> <p>4 The bottle tells you to put it on your hands and</p> <p>5 spread it over baby's -- baby's bottom and legs.</p> <p>6 Q. So, for any of us who might have seen</p> <p>7 dust come out, were we hallucinating?</p> <p>8 MS. SULLIVAN: Objection, your Honor,</p> <p>9 argument, lawyer argument.</p> <p>10 THE COURT: Please rephrase.</p> <p>11 And no speaking objections, thank you.</p> <p>12 BY MR. PANATIER:</p> <p>13 Q. Sir -- sir, are you saying -- let's</p> <p>14 go back to the initial question. We're in 2017.</p> <p>15 You said, yes, a child will inhale some of the talc,</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. Do you still agree with that?</p> <p>19 A. We breathe in dust from the</p> <p>20 atmosphere in this room. Whether it's talc or</p> <p>21 whatever, we can still inhale. We inhale. We</p> <p>22 exhale. That's what we do.</p> <p>23 Q. I'm not talking about dust in this</p> <p>24 room. I'm talking about Johnson's Baby Powder,</p> <p>25 right?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. Yes.</p> <p>2 Q. Okay. So let's stick to the product</p> <p>3 that your company made.</p> <p>4 When a parent or a sibling or</p> <p>5 somebody in the family powders a child, a baby from</p> <p>6 birth until whenever they're diaper trained,</p> <p>7 diaper -- potty trained or out of diapers whether</p> <p>8 it's age two or three or whatever, whenever they are</p> <p>9 powdered, they breathe in some of that talc, do they</p> <p>10 not, sir?</p> <p>11 A. We all do, yes.</p> <p>12 Q. The baby does?</p> <p>13 A. The baby does, adults do, yes.</p> <p>14 Q. Anybody who is powdered with</p> <p>15 Johnson's Baby Powder, especially, as a child, is</p> <p>16 going to breathe in some of that dust, are they not?</p> <p>17 A. Yeah, we breathe in, we breathe out,</p> <p>18 yes.</p> <p>19 Q. Alright. Johnson &amp; Johnson</p> <p>20 understood that it would be very, very bad for</p> <p>21 business and J&amp;J's representation if it ever came</p> <p>22 out that baby powder or any of its talc products</p> <p>23 ever contained asbestos, correct?</p> <p>24 A. If the baby powder did contain</p> <p>25 asbestos, it would be bad for business, if it did,</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Do you remember that in October of</p> <p>2 2018 you and I went through a series of documents</p> <p>3 about Baby Center where Johnson &amp; Johnson was,</p> <p>4 actually, talking about posting content on</p> <p>5 BabyCenter.com? Do you remember that?</p> <p>6 A. No, you'd need to remind me. What</p> <p>7 I've said, I believe in 2018, was that Johnson &amp;</p> <p>8 Johnson doesn't have the responsibility for the text</p> <p>9 that goes on to that domain name.</p> <p>10 Q. Johnson &amp; Johnson owns it, right?</p> <p>11 A. They own the domain name, but not the</p> <p>12 content. The content is written by people who are</p> <p>13 not part of Johnson &amp; Johnson.</p> <p>14 Q. Right. And you and I talked about</p> <p>15 this?</p> <p>16 A. We did. And I tried to make that</p> <p>17 clear. It is -- what goes on to that website is not</p> <p>18 the responsibility of Johnson &amp; Johnson. It's done</p> <p>19 by outside group.</p> <p>20 Q. Johnson &amp; Johnson owns and controls</p> <p>21 the website, correct?</p> <p>22 A. They own the domain name. They do</p> <p>23 not control what goes onto that website.</p> <p>24 Q. They own it but they have no control</p> <p>25 on what goes on the website?</p>
<p style="text-align: right;">Page 39</p> <p>1 yes.</p> <p>2 Q. Now, it's still your testimony here</p> <p>3 almost two years after I first took your deposition</p> <p>4 that there has never been any asbestos in Johnson's</p> <p>5 Baby Powder, right?</p> <p>6 A. Not in the baby powder that's sold,</p> <p>7 no, no.</p> <p>8 Q. Was it in the baby powder that wasn't</p> <p>9 sold?</p> <p>10 A. No, not in the baby powder, no.</p> <p>11 Q. Okay. Sir, isn't it true that</p> <p>12 Johnson &amp; Johnson knows that baby powder shouldn't</p> <p>13 be used on children at all?</p> <p>14 A. I don't agree with that.</p> <p>15 Q. Now, Johnson &amp; Johnson owns a website</p> <p>16 called BabyCenter.com, right?</p> <p>17 A. There is a website which is not --</p> <p>18 it's not -- the web -- the web -- the link and the</p> <p>19 web domain name is owned by Johnson &amp; Johnson.</p> <p>20 Q. Johnson &amp; Johnson owns and runs</p> <p>21 BabyCenter.com, right?</p> <p>22 A. It does not run it. It is -- it's</p> <p>23 run by a separate independent group. It's not part</p> <p>24 of Johnson &amp; Johnson. They own the domain name, but</p> <p>25 they have no --</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Sounds crazy. That's my</p> <p>2 understanding, that they own the domain name but</p> <p>3 they do not control what goes onto the website.</p> <p>4 Q. I agree with you, it does sound</p> <p>5 crazy. Because you're saying --</p> <p>6 MS. SULLIVAN: Objection, your Honor,</p> <p>7 lawyer argument.</p> <p>8 MR. PANATIER: It does sound crazy.</p> <p>9 THE COURT: Objection sustained.</p> <p>10 No speaking objections. That's the</p> <p>11 second time.</p> <p>12 BY MR. PANATIER:</p> <p>13 Q. Dr. Hopkins, your testimony to this</p> <p>14 jury is that Johnson &amp; Johnson -- by the way, this</p> <p>15 is a huge company, right, everybody knows that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. That Johnson &amp; Johnson owns a</p> <p>18 website domain name and they conceded all control of</p> <p>19 that domain name to somebody else; is that correct?</p> <p>20 A. I've not seen the terms of the</p> <p>21 agreement. But what I do know is that the content</p> <p>22 of what is written on that website is not approved</p> <p>23 or disapproved by Johnson &amp; Johnson. They don't</p> <p>24 take responsibility for what is written on that</p> <p>25 website.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q. Let's take a look at BabyCenter.com.</p> <p>2 MS. SULLIVAN: Your Honor, based on</p> <p>3 the testimony, objection as to hearsay.</p> <p>4 THE COURT: I'm going to allow him to</p> <p>5 try to establish foundation for it.</p> <p>6 Go ahead.</p> <p>7 MR. PANATIER: We'll get the</p> <p>8 document. We'll move ahead and do that.</p> <p>9 THE COURT: Okay.</p> <p>10 BY MR. PANATIER:</p> <p>11 Q. We'll come back to Baby Center, okay.</p> <p>12 We can bookmark this with this</p> <p>13 question.</p> <p>14 Johnson &amp; Johnson, certainly, doesn't</p> <p>15 put on its baby powder or any of its talc a warning</p> <p>16 that says, this may contain asbestos, does it?</p> <p>17 A. No, it doesn't.</p> <p>18 Q. It doesn't put a warning on it that</p> <p>19 says, do not use on babies?</p> <p>20 A. No, it doesn't.</p> <p>21 Q. Right. Because it's, specifically,</p> <p>22 marketed for babies, right?</p> <p>23 A. Yes.</p> <p>24 Q. Johnson &amp; Johnson has always stated</p> <p>25 that it has a zero tolerance policy for asbestos,</p>	<p style="text-align: right;">Page 44</p> <p>1 "non-detect" means.</p> <p>2 MS. SULLIVAN: Objection, your Honor.</p> <p>3 THE COURT: Overruled.</p> <p>4 Q. There shouldn't be any asbestos in</p> <p>5 baby powder, period, correct?</p> <p>6 A. Yes.</p> <p>7 Q. It should be asbestos-free, correct?</p> <p>8 A. Yes.</p> <p>9 Q. "Asbestos-free" means zero, correct?</p> <p>10 A. Yes.</p> <p>11 Q. As you have said before, any amount</p> <p>12 of tremolite in the form of asbestos, quote, "those</p> <p>13 needles," like you say, any amount is not allowed,</p> <p>14 correct?</p> <p>15 A. Tremolite -- I know what I said.</p> <p>16 Tremolite asbestos is not allowed. Tremolite is a</p> <p>17 relatively harmless mineral in its block or rock</p> <p>18 form.</p> <p>19 Q. You have stated before that asbestos</p> <p>20 in the form of needles such as tremolite shouldn't</p> <p>21 be in the baby powder?</p> <p>22 A. Asbestos should not be in baby</p> <p>23 powder. Tremolite can occur -- most tremolite</p> <p>24 occurs in the form of a nonasbestos form or rod</p> <p>25 form.</p>
<p style="text-align: right;">Page 43</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And Johnson &amp; Johnson has always told</p> <p>4 the public that there's never been a single fiber of</p> <p>5 asbestos in any of its talc for Johnson's Baby</p> <p>6 Powder or Shower to Shower, correct?</p> <p>7 A. Yes.</p> <p>8 Q. It told that to customers, nurses,</p> <p>9 doctors and regulators and hospitals, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Johnson &amp; Johnson has stated that</p> <p>12 there should never ever ever be asbestos in baby</p> <p>13 powder, not a single fiber, zero, correct?</p> <p>14 A. I can't remember the exact</p> <p>15 phraseology, but the principle is the same. I'll</p> <p>16 agree with the principle, correct.</p> <p>17 Q. Well, okay. And just to separate</p> <p>18 that out, Johnson &amp; Johnson agrees today now in 2019</p> <p>19 that baby powder should never have any asbestos in</p> <p>20 it, correct?</p> <p>21 A. Yes.</p> <p>22 Q. That means zero asbestos, correct?</p> <p>23 A. Yeah, it's non-detected. You can't</p> <p>24 find it. There's none there, yes.</p> <p>25 Q. We're going to get into what</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Has Johnson &amp; Johnson always</p> <p>2 internally believed in a zero tolerance policy for</p> <p>3 asbestos?</p> <p>4 A. That is my understanding, yes.</p> <p>5 Q. You agree any asbestos in baby powder</p> <p>6 is too much?</p> <p>7 A. Yeah, that's what we just said, yes.</p> <p>8 Q. The reason is that no mother or</p> <p>9 father would ever buy any baby powder if it even had</p> <p>10 one fiber of asbestos in it, correct?</p> <p>11 A. Well, you're asking me to speculate.</p> <p>12 But if the product had asbestos in it, I wouldn't</p> <p>13 buy it.</p> <p>14 Q. Right.</p> <p>15 And Johnson &amp; Johnson's expectation</p> <p>16 would be that no one else would buy it either,</p> <p>17 right?</p> <p>18 A. Well, it's speculative, but it's a</p> <p>19 reasonable speculation.</p> <p>20 Q. And Johnson &amp; Johnson knows that</p> <p>21 asbestos in its talc could make people sick because</p> <p>22 Johnson &amp; Johnson knows that asbestos is a</p> <p>23 carcinogen and causes mesothelioma, correct?</p> <p>24 A. Several questions there.</p> <p>25 Asbestos causes -- can cause</p>

<p style="text-align: right;">Page 46</p> <p>1 mesothelioma, correct, yes.  2 Q. Well, let's just go to -- go to  3 8/15/17, it's the first one, Page 33.  4 MS. SULLIVAN: What line, Counsel?  5 MR. PANATIER: Give me a second.  6 BY MR. PANATIER:  7 Q. Okay. First of all, Johnson &amp;  8 Johnson agrees asbestos is a carcinogen, correct?  9 A. Yes.  10 Q. And Johnson &amp; Johnson agrees that no  11 carcinogen should be contained in the Johnson's Baby  12 Powder, correct?  13 A. Yes.  14 Q. Okay. Go to 4/11/2018 on Page 108.  15 Are you there?  16 A. Yes.  17 Q. Okay. On Line 18, you were asked  18 this question.  19 MS. SULLIVAN: Objection, your Honor,  20 in terms of the procedure. This is not (INAUDIBLE).  21 I'm not sure --  22 MR. PANATIER: It is.  23 THE COURT: Sidebar.  24 (Sidebar.)  25 THE COURT: Okay. Page, what are</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Yeah. That's what I said five  2 minutes ago.  3 Q. You said -- when I asked you the  4 question, you said, yes, asbestos is a carcinogen.  5 This was a slightly different question, but we can  6 move on.  7 Johnson &amp; Johnson knows there is no safe  8 level of asbestos exposure, correct?  9 A. Scientists have not shown a safe  10 level. So, yeah, I would not disagree.  11 Q. There is no known safe level of  12 asbestos exposure, especially, for children,  13 correct?  14 A. Again, same answer. There's no -- no  15 evidence to say otherwise, so we'll assume it's  16 correct.  17 Q. Well, in fact, your answer, if you  18 could go right below on Page 108, you were asked  19 this question. "Okay, and Johnson &amp; Johnson knows  20 there's no safe level of asbestos exposure,  21 especially for children, correct, sir?"  22 And your answer was again, "There is  23 no known safe level," correct?  24 A. Yes. That's what I said.  25 Q. And then the followup question was,</p>
<p style="text-align: right;">Page 47</p> <p>1 we --  2 MR. PANATIER: 108, Line 18 through  3 22. This is the exact question I asked him before  4 and he didn't answer. He said, I agree it's a  5 carcinogen, but that's not the question. He said, I  6 agree it's a carcinogen --  7 THE COURT: Well, this time the same  8 question. You said it's a compound question. So  9 I'll allow it. Go ahead.  10 MR. PANATIER: Thank you, your Honor.  11 MS. SULLIVAN: Thank you.  12 (Sidebar ends.)  13 BY MR. PANATIER:  14 Q. Doctor, you were asked this question,  15 "Johnson &amp; Johnson knows that asbestos in its talc  16 could make people sick because Johnson &amp; Johnson  17 knows asbestos is a carcinogen and can cause  18 mesothelioma?"  19 And what was your answer?  20 A. What page are you on, again?  21 Q. Same Page, 108.  22 A. 108. Beg your pardon, I was on a  23 different page.  24 Q. Line 18 through 22. Your answer was,  25 "That is correct."</p>	<p style="text-align: right;">Page 49</p> <p>1 "That's right, especially, for children, correct?"  2 And you said, "yes," correct?  3 A. That's right. That's what I agree,  4 yeah.  5 Q. Alright. Johnson &amp; Johnson  6 understands that if you had just 1 percent by weight  7 of asbestos in a four-ounce bottle of the Johnson's  8 Baby Powder, you don't know if it would be trillions  9 or millions or billions of fibers, but it would be a  10 very large number, correct?  11 A. Yes.  12 Q. In eight ounces of Johnson's Baby  13 Powder there would be tens to hundreds of trillions  14 of particles, correct?  15 A. I don't think anyone has ever counted  16 them. But you could estimate that would be many,  17 many trillions, yes.  18 Q. Okay. And we can look at your  19 testimony from 2017 --  20 A. Yeah.  21 Q. -- but, I believe, you said there  22 could be tens to hundreds of trillions of particles?  23 A. Yes.  24 Q. Okay. And if we just wanted to get  25 an understanding of what that would mean in terms of</p>

<p style="text-align: right;">Page 50</p> <p>1 how much asbestos was present, you and I did this 2 calculation. 3 If you had .00001 percent chrysotile and 4 there are only a trillion particles in the whole 5 bottle, not tens or hundreds, you would still have 6 10 million fibers per container, correct? 7 A. That's the math, yes. 8 Q. Okay. Alright. Do you know whether 9 or not Johnson &amp; Johnson has put together an 10 official good rocks, bad rocks company policy? 11 A. I've not seen any such company 12 policy. The company policy is very clear on the 13 quality of talc and what specification a talc must 14 meet, absence of asbestos minerals. 15 Q. Is there a good rocks, bad rocks list 16 that they keep? 17 A. I've not seen such a document that's 18 kept. 19 Q. Alright. So Johnson &amp; Johnson 20 understood, of course, that not only would parents 21 be diapering their children, but that siblings would 22 help out, too, correct? 23 A. Well, that's speculation. I don't 24 ever recollect my kids diapering their younger 25 brothers and sisters, but maybe some people do.</p>	<p style="text-align: right;">Page 52</p> <p>1 THE COURT: You may proceed. 2 BY MR. PANATIER: 3 Q. Dr. Hopkins, do you see this document 4 from 1955 where -- let me zoom in on this a little 5 bit. It's from W.B. Birchfield. "You recently 6 asked Mr. Quackenboss" -- that's a name -- "what we 7 were doing along the lines of providing educational 8 material to clinics conducting new mother classes. 9 In addition to rather extensive use of our bathing 10 time for baby film, we have been providing 11 quantities of a special occasional chart, a sample 12 of which is attached. This chart was first produced 13 in early 1954 and has been reprinted several times. 14 It is authentic and has enjoyed wide acceptance, 15 okay." 16 So have you seen this now? 17 A. Yes. 18 Q. Okay. Now, do you know when, for 19 instance, do you know when Mr. Etheridge was born, 20 David Ethridge? 21 A. I don't. 22 Q. Do you know who that is? 23 A. I believe it's one of the -- your 24 Plaintiffs. 25 Q. Right.</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. If you would turn please, sir, to -- 2 in the exhibit binder there, it should be 3 chronological and you should be looking for a 4 document that is -- the tab should say "1955" on it. 5 And you've already turned one tab, sir, so you might 6 be missing it. Is that it? 7 A. Yes. 8 Q. 1955, February 22nd? 9 A. Yeah. Yeah. 10 Q. Okay. Do you see that that is a 11 document dated February 22, 1955 on Johnson &amp; 12 Johnson letterhead? 13 A. It is. 14 Q. Okay. 15 MR. PANATIER: Your Honor, I offer 16 this into evidence as Plaintiffs Exhibit 3695-8. 17 MS. SULLIVAN: Your Honor, just a 18 second, please. 19 A. Okay. 20 THE COURT: Hold on. 21 MS. SULLIVAN: No objection, your 22 Honor. 23 THE COURT: So admitted. 24 (Plaintiff's Exhibit 3695-8 was moved 25 into evidence.)</p>	<p style="text-align: right;">Page 53</p> <p>1 A. Clients, yes. 2 Q. And you understand he has 3 mesothelioma? 4 A. I do, yes. 5 Q. Do you know when his sister started 6 powdering him? 7 A. I do not. 8 Q. So let's take a peak at one of these 9 brochures. You can see that they have a "How a Baby 10 Grows" brochure. Do you see that? 11 A. I do, yes. 12 Q. And then if you turn the page, 13 there's this document "How to Bathe a Baby." Do you 14 see that? 15 A. Yes. 16 Q. We can zoom in a little bit on it. 17 And you see it looks like a mother and older 18 daughter, right? 19 A. Yeah, it looks 17, 18, yeah, yeah. 20 Q. Well, look just right here. "A 21 visual chart for students who have baby brothers and 22 sisters at home or who serve as mother's helper or 23 babysitters or for those who are studying childcare 24 or may soon start families of their own." 25 So Johnson &amp; Johnson certainly</p>

<p style="text-align: right;">Page 54</p> <p>1 understood that brothers and sisters might be 2 helping out mom, right? Right, I mean, this is -- 3 A. Well, it talks -- it talks about 4 those who are about to start families of their own 5 so -- yeah. 6 Q. Well, that's the last part. 7 A. But the photograph you're hiding 8 there is just -- if you can move it along, the jury 9 can see it, is a girl who is maybe an older brother 10 or older sister, but she looks about 16, 17. 11 Q. Okay. Well, I'm not an expert in 12 dating people. 13 But what it says is that it's a 14 visual chart for students who have baby brothers and 15 sisters at home, does it not? 16 A. Yes, for students, yeah. 17 Q. Or who serve as mother's helpers or 18 babysitters or for those who are studying childcare, 19 right? 20 A. Yes. 21 Q. It's not just for students, it's for 22 brothers and sisters as well as, correct? 23 A. Those who are studying childcare, 24 yes. 25 Q. Okay.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Okay. Because I just want to be 2 clear. The word "brothers and sisters" is on this 3 document, right? 4 A. Yes. 5 Q. Okay. So it wouldn't be speculation 6 to say that brothers and sisters would help out at 7 home because Johnson &amp; Johnson published a document 8 called "How to Bathe a Baby" that deals, 9 specifically, with brothers and sisters helping out 10 at home, right? 11 A. Yeah. On the picture they show is a 12 girl who looks like 17. 13 Q. Is Johnson &amp; Johnson saying there's a 14 cutoff age? 15 A. No. The picture they show and that 16 they talk about students and childcare, it is of 17 that age. They are not saying here's, you know, 18 here's something for a four-year old, go and bathe 19 or diaper your two-year old brother. It's a picture 20 of a girl who is in her teens and they talk about 21 students getting into childcare. 22 Q. They talk about a number of different 23 scenarios, right? 24 A. But the theme here is about older 25 children.</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Like I say, the picture typifies a 2 typical teenager who's maybe learning not baby care, 3 childcare. 4 Q. Sure. And she's got a bottle of 5 something in her hand, right? 6 A. Yes. 7 Q. Okay. Let's go over to this little 8 square up at the top. You see, "place bath needs 9 within reach," and you see the fourth one to the 10 last is "baby powder," right? 11 A. Yes, uh-huh. 12 Q. And then if we go down to the 13 bottom -- I turned up the brightness on this thing. 14 Let me see if I can. There we go. There we go. 15 And do you see where it says, 16 "Sprinkle baby powder on cotton ball, pat lightly 17 over large areas of body," right? 18 A. Yes. 19 Q. So, as of 1955, Johnson &amp; Johnson 20 understands that brothers and sisters are going to 21 help out diapering, bathing the children, correct? 22 A. Well, as you say, in the very first 23 paragraph, it talks about students, people who were 24 going into childcare or child baby care management 25 who could well be brothers and sisters.</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. Does it say "older children"? 2 A. Well, the picture is clearly one of a 3 17-year-old, 16 or 17-year-old. 4 Q. How old was Linda Etheridge when she 5 started powdering David Etheridge? 6 A. I don't know. 7 Q. Have you read any of the depositions 8 of the actual people that are involved in this case? 9 MS. SULLIVAN: Objection to the form. 10 Sorry. 11 THE COURT: Overruled. 12 You can answer. 13 BY MR. PANATIER: 14 Q. Have you read any of the depositions 15 of Mr. Etheridge, his sister, have you read those? 16 A. No. 17 Q. What about -- what about the 18 Ronnings? 19 A. No. 20 Q. How about the Bardens? 21 A. No. 22 Q. What about the D'Angela McNeill and 23 her brother and her mother? 24 A. No. 25 Q. If you'll turn to -- it should be --</p>

<p style="text-align: right;">Page 58</p> <p>1 here you go, 2003, which I think is in Binder 4.  2 I'll bring you Binder 4.  3 MR. PANATIER: And, your Honor, I'll  4 bring you Binder 4 as well. There it is, your  5 Honor.  6 THE COURT: Thank you, very much.  7 MR. PANATIER: Sure.  8 BY MR. PANATIER:  9 Q. Do you need help finding that one?  10 A. 2003?  11 Q. 2003.  12 A. Yes.  13 Q. That's all it says. That's it right  14 there. That's it right there.  15 Sir, do you see that this is a  16 presentation, "reactive usage for oil and powder of  17 Johnson's Baby Powder, a beauty essential"? Do you  18 see that?  19 A. Yes.  20 Q. Let me ask you this.  21 Johnson &amp; Johnson understood that people  22 would also sprinkle baby powder on the sheets of  23 their bed, correct?  24 A. That's what -- yeah, I've heard that.  25 I've never heard of anyone doing it but, yeah.</p>	<p style="text-align: right;">Page 60</p> <p>1 document.  2 THE COURT: Okay. Sidebar.  3 (Sidebar.)  4 MS. SULLIVAN: Your Honor, I object  5 on hearsay. It's from a public relations firm. It  6 doesn't have a J&amp;J Bates number on it. The  7 changeovers --  8 MR. PANATIER: The native Power  9 Points when they produced them natively, so this is  10 the actual file.  11 THE COURT: Wait. What do you mean  12 by "native"?  13 MR. PANATIER: So they produce  14 documents in two ways. One is like when you've seen  15 a document like the previous one where they put a  16 Bates Stamp on it. "Native" means instead of  17 producing a printout, they produced the actual Power  18 Point and the file has the Bates Stamp that was  19 produced by Johnson &amp; Johnson in this case. Counsel  20 knows that. It is a Johnson &amp; Johnson document.  21 MS. SULLIVAN: It's a public  22 relations worldwide document. I object on hearsay.  23 MR. PANATIER: They have documents  24 that they have produced by third parties all the  25 time. The documents are full of those. This is a</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Do you know whether or not D'Angela  2 McNeill did it?  3 A. I don't, no.  4 Q. So go ahead and turn --  5 MR. PANATIER: Oh, your Honor, this  6 is Exhibit 3695-15. And we offer it into evidence.  7 MS. SULLIVAN: No objection.  8 THE COURT: I'm sorry?  9 MS. SULLIVAN: No objection, your  10 Honor.  11 THE COURT: So admitted.  12 (Plaintiff's Exhibit 3695-15 was  13 moved into evidence.)  14 Q. If you will turn to the last page,  15 sir. It says, "reactive usage for oil and powder  16 alternative uses for Johnson's powder."  17 THE COURT: Counsel, the word is not  18 "reactive."  19 MS. SULLIVAN: I apologize, your  20 Honor. I didn't realize this is not a J&amp;J document.  21 MR. PANATIER: Oh, I'm sorry,  22 "reactivate."  23 MS. SULLIVAN: I do object --  24 THE COURT: Hold on.  25 MS. SULLIVAN: -- this is not a J&amp;J</p>	<p style="text-align: right;">Page 61</p> <p>1 Johnson &amp; Johnson document. If Counsel is making a  2 representation that it's not Johnson &amp; Johnson --  3 MS. SULLIVAN: I'm not saying -- if  4 you're representing we produced it, I have no  5 evidence to dispute it, except I don't see a Bates  6 number. But it's clearly not their document.  7 MR. PANATIER: They contract with  8 third parties all the time to produce information  9 for them. That's what this is.  10 THE COURT: Okay. I just need -- if  11 Counsel is asserting that this was not produced by  12 Johnson &amp; Johnson, I just need the authentication.  13 MR. PANATIER: I'll get the Bates  14 Stamp and come back to it. That's fine.  15 MS. SULLIVAN: And, your Honor, I  16 just ask that he point out that this is from a  17 public relations. This is really misleading to say  18 it's Johnson &amp; Johnson. He should say it's public  19 relations.  20 THE COURT: If Johnson &amp; Johnson  21 hired PR firms to prepare advertisements for them  22 whether it be TV, print, et cetera, then I just need  23 the foundation on that. I need the authentication  24 on that and then you can use it.  25 Alright. Do you have it?</p>

<p style="text-align: right;">Page 62</p> <p>1 MR. PANATIER: Yes. But we are going 2 to have to pull it up, because we didn't think that 3 they were going to object to their own document. 4 But we'll have to pull up the file -- 5 THE COURT: You can take that up on 6 cross-examination. 7 So do you have it or do you want to 8 move and -- 9 MR. PANATIER: Well, we'll have to -- 10 we'll have to look it up. 11 THE COURT: Okay. Fine. Thank you. 12 (Sidebar ends.) 13 BY MR. PANATIER: 14 Q. Alright, let me ask you this 15 question: Johnson &amp; Johnson hired PR firms to put 16 together information for them, correct? 17 A. Public relations -- 18 Q. On different subjects. 19 A. Advertising firms and public 20 relations firms, they were often involved, say, come 21 in, give us some ideas. 22 Q. Okay. So you said you had never 23 heard of people putting baby powder in their sheets? 24 A. I've heard of it. But it's not 25 something that I've ever heard Johnson &amp; Johnson</p>	<p style="text-align: right;">Page 64</p> <p>1 descriptor, but it doesn't mean it's harmful. 2 MR. PANATIER: Your Honor, I would 3 move to strike everything after the initial answer 4 as non-responsive. He's opining on whether or not 5 it's harmless -- 6 THE COURT: Objection is sustained. 7 Jury will disregard anything after the initial 8 response. 9 Continue. 10 MR. PANATIER: Thank you, your Honor. 11 BY MR. PANATIER: 12 Q. Sir, if you'll go ahead and turn to 13 the depositions' notebook there to 2017, 8-17, so 14 August 17, 2017. Okay. 15 A. What page? 16 Q. It will be 1037, 1,037. That was a 17 long deposition. 18 A. Uh-huh. We have it, yes. 19 Q. I'm going to jump ahead here briefly 20 and I'm going to ask you to confirm that we've heard 21 about XRD, X-ray diffraction, that detection 22 technique. You're familiar with that? 23 A. Yes, sir. 24 Q. XRD is not a microscope, correct? 25 A. No, it's a piece of equipment.</p>
<p style="text-align: right;">Page 63</p> <p>1 saying this is something that you should do. 2 Q. Johnson &amp; Johnson knows people did 3 that, right? 4 A. Well, I know that people have done 5 that. I've heard of that. But it's not something 6 that I've ever seen in Johnson &amp; Johnson 7 correspondence that we're aware that people have 8 this use for it. 9 Q. Is it possible that you haven't seen 10 it because it's in the 990,000 documents you haven't 11 looked at? 12 A. It's possible, yes. 13 Q. Alright. We'll come back to that, 14 okay. 15 (There is a discussion off the 16 record.) 17 BY MR. PANATIER: 18 Q. Dr. Hopkins, Johnson &amp; Johnson 19 understood that any presence of amphibole mineral 20 whether in the form of asbestos as you say or not, 21 should not have been in the powder, correct? 22 A. I don't -- I don't agree with that. 23 Amphibole -- amphiboles are present in just about 24 every county in the United States. They're 25 invariably quite harmless. It's a geological</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Right. And all it tells you is 2 whether or not a mineral is present. It doesn't 3 tell you what it looks like, right? 4 A. No. 5 Q. Correct? 6 A. Correct, yes. 7 Q. It doesn't tell you whether it's in 8 fibers or whether it's in chunks, correct? 9 A. Yes. You to have look at other 10 techniques. 11 Q. Right. So, if you could look, 12 please, sir, at Page 1037. You were asked this 13 question. 14 MS. SULLIVAN: Can I have the line, 15 Counsel? 16 MR. PANATIER: Yeah, Line 8. 17 BY MR. PANATIER: 18 Q. And to the -- 19 MS. SULLIVAN: I'm sorry, your Honor. 20 If I can just have a minute. 21 MR. PANATIER: Counsel, are you 22 ready? 23 MS. SULLIVAN: (INAUDIBLE) 24 impeachment is concerned. 25 THE COURT: How about we do that at</p>

<p style="text-align: right;">Page 66</p> <p>1 sidebar. 2 (Sidebar.) 3 THE COURT: So it's Line 8 through 4 what? 5 MR. PANATIER: Line 8 through 24. 6 THE COURT: Okay. I'll hear you. 7 MR. PANATIER: 1037. 8 THE COURT: Go ahead. 9 MS. SULLIVAN: What are you 10 impeaching him on, saying it's inconsistent with 11 this? What are you impeaching him on? 12 MR. PANATIER: He said the presence 13 of the minerals is fine. And I'm impeaching him 14 because here he says it should have been rejected. 15 That's direct impeachment. 16 MS. SULLIVAN: Where is that? 17 MR. PANATIER: Right here. That's 18 grounds for rejection. 19 MS. SULLIVAN: I don't think it's 20 impeachment, your Honor. 21 THE COURT: It does qualify for 22 impeachment based upon his response relative to the 23 distinction whether or not with any amphiboles. 24 So go ahead. 25 MS. SULLIVAN: Okay. Thank you, your</p>	<p style="text-align: right;">Page 68</p> <p>1 had polarized light" there? 2 A. No, but I'm asking -- 3 Q. Okay. Let's go to the next question. 4 "So, if a lot was positive just by XRD, it 5 would have been rejected?" 6 And your answer was, "That was my 7 belief," correct? 8 A. Yeah, and that is the case. It is 9 correct. It would have been rejected until it had 10 come out of rejection by validated whether or not 11 polarized light showed a problem or not. 12 Q. So you didn't say that here, did you? 13 A. You didn't ask me. 14 Q. I didn't ask you here either and you 15 volunteered it, didn't you? 16 MS. SULLIVAN: Objection, you Honor, 17 that's argument. 18 THE COURT: Objection sustained. 19 Let's not argue with the witness, 20 please. 21 BY MR. PANATIER: 22 Q. Sir, look, let's look at what you 23 said. "So if a lot was positive just by XRD" -- 24 that's just the mineral, correct, sir? 25 A. XRD would pick up amphibole.</p>
<p style="text-align: right;">Page 67</p> <p>1 Honor. 2 (Sidebar ends.) 3 BY MR. PANATIER: 4 Q. Sir, it was Johnson &amp; Johnson's 5 policy, correct, to reject any talc that had the 6 presence of the mineral at all, correct? 7 A. Sorry, the mineral, what mineral? 8 Q. Amphibole mineral. 9 A. Amphibole, right. The step is that 10 you look at X-ray diffraction and if you get a 11 positive result for an amphibole, you reject it 12 until you've done the next step, which is polarized 13 light microscopy so that you can actually see what 14 kind of amphibole it is, whether it's a harmless 15 material or an asbestiform material. 16 Q. Let's look and see what you said, 17 okay. Line 8. "And to the extent that any, any 18 lots of talc were tested and there was a positive 19 XRD for amphiboles minerals at anytime, was that lot 20 placed on hold before it used?" 21 And your answer was, "The way the testing 22 would have been done, it was -- it would not have 23 been -- it was not have been filled," correct? 24 A. Until it had polarized light, yes. 25 Q. Oh, I'm sorry. Did you say "until it</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. "It would have been rejected, that is 2 my belief," correct? 3 A. It would have been rejected until it 4 was de-rejected or un-rejected. It would have been 5 held until you had done the test. So you reject 6 it -- you can't fill it until you've clarified what 7 the problem was. 8 Q. Did you say that here? 9 A. Here -- just now? No. 10 Q. No. We know you said it just now; 11 here? 12 A. No, but you didn't ask me to go on 13 and explain it any further when you asked me that 14 question back in 2017. 15 Q. Well, I asked you right after -- 16 MS. SULLIVAN: Objection, your Honor, 17 this is argument. 18 THE COURT: Overruled. 19 BY MR. PANATIER: 20 Q. "And by XRD, you're just detecting 21 the mineral presence, correct?" 22 Answer: "Correct." 23 And I asked you again, "but that was grounds 24 of J&amp;J for rejection; is that true?" 25 Answer: "That is the specification,"</p>

<p style="text-align: right;">Page 70</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. So I asked it you about it again and</p> <p>4 you didn't say anything about, well, until it's</p> <p>5 un-rejected, did you?</p> <p>6 A. I didn't give you that additional</p> <p>7 information because you didn't ask for it.</p> <p>8 Q. I didn't ask for it either and you</p> <p>9 did, correct? Correct?</p> <p>10 A. You -- okay. I think I've explained</p> <p>11 that you reject it until you've got reasons to</p> <p>12 un-reject it.</p> <p>13 (There is a discussion off the</p> <p>14 record.)</p> <p>15 BY MR. PANATIER:</p> <p>16 Q. You know Fred Pooley, right?</p> <p>17 A. Yes, I do. I know him well.</p> <p>18 Q. We've heard a lot about Fred Pooley</p> <p>19 in this case.</p> <p>20 So, in 1996, you were at the company,</p> <p>21 you were at Johnson &amp; Johnson, right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. If you will turn please, sir,</p> <p>24 to the tab for 1996. And we might be going into</p> <p>25 another binder. Nope. I think it's in Binder 4.</p>	<p style="text-align: right;">Page 72</p> <p>1 MS. SULLIVAN: No objection.</p> <p>2 THE COURT: So admitted.</p> <p>3 What is the numbering on this one?</p> <p>4 I'm sorry.</p> <p>5 MR. PANATIER: 2738, your Honor.</p> <p>6 THE COURT: Thank you.</p> <p>7 (Plaintiff's Exhibit 2738 was moved</p> <p>8 into evidence.)</p> <p>9 Q. So let's go back to January 22, 1996.</p> <p>10 This is from Bill Ashton to you, right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And here it says, "From Bill,</p> <p>13 attached is Page 11 of the current issue of a CTPA</p> <p>14 guide wherein Fred Pooley makes the suggestion that</p> <p>15 any batch of cosmetic talc which reads positive for</p> <p>16 the presence of amphiboles should be rejected even</p> <p>17 if subsequent examination establishes whether or not</p> <p>18 the mineral is fibrous or non-fibrous."</p> <p>19 Now, I've shown you this before,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. "We need clarification on this since</p> <p>23 it is in conflict in all the work here in US based</p> <p>24 primarily on the mineral tremolite, which is present</p> <p>25 in trace amounts in many high grade talcs, including</p>
<p style="text-align: right;">Page 71</p> <p>1 It should be January 29, 1996.</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And, sir, this is a memo that</p> <p>4 is a Johnson &amp; Johnson memo, correct?</p> <p>5 A. It is, yes.</p> <p>6 Q. There's really two communications</p> <p>7 here. The page before is a communication from Bill</p> <p>8 Ashton to you, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And then there's a follow-up from you</p> <p>11 to Ian Philipson, the head of scientific services at</p> <p>12 the Cosmetic, Toiletry and Perfume Association</p> <p>13 Limited, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Now, we've heard of CTFA, that was</p> <p>16 the Cosmetics, Toiletries and Fragrances Association</p> <p>17 here in the States, right?</p> <p>18 A. Yes.</p> <p>19 Q. And Great Britain had a similar</p> <p>20 version called the CTPA, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Alright.</p> <p>23 MR. PANATIER: Your Honor, at this</p> <p>24 time we offer Plaintiff's Exhibit 2738 into</p> <p>25 evidence.</p>	<p style="text-align: right;">Page 73</p> <p>1 Johnson &amp; Johnson's," right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. "The mineral tremolite is</p> <p>4 chemically a calcium silicate and occurs in two</p> <p>5 crystallographic habits, fibrous, which is called</p> <p>6 tremolite asbestos and prismatic or non-fibrous,</p> <p>7 which is non-asbestiform." Did I read that, right?</p> <p>8 A. You did.</p> <p>9 Q. Okay. So let's get our definitions</p> <p>10 straight.</p> <p>11 You agree with what Bill Ashton said</p> <p>12 here --</p> <p>13 MS. SULLIVAN: Your Honor, I'm sorry.</p> <p>14 THE COURT: Wait, wait, wait.</p> <p>15 Counsel, sidebar.</p> <p>16 MR. PANATIER: I'm sorry?</p> <p>17 MS. SULLIVAN: I was going to ask him</p> <p>18 to read the line for completion.</p> <p>19 MR. PANATIER: Sure.</p> <p>20 BY MR. PANATIER:</p> <p>21 Q. "Here in the US, a controversy has</p> <p>22 been under way for the past 25 years."</p> <p>23 MS. SULLIVAN: And then the next one.</p> <p>24 MR. PANATIER: I'll read the whole</p> <p>25 paragraph.</p>

<p style="text-align: right;">Page 74</p> <p>1 MS. SULLIVAN: No, just the next one.</p> <p>2 MR. PANATIER: No, I'll read the</p> <p>3 whole paragraph.</p> <p>4 MS. SULLIVAN: Okay.</p> <p>5 BY MR. PANATIER:</p> <p>6 Q. "All agencies and health oriented</p> <p>7 groups have accepted the view that only the rare</p> <p>8 fibrous tremolite might be hazard as opposed to the</p> <p>9 harmless prismatic form. This has been fought at</p> <p>10 many meetings of science groups and in the courts</p> <p>11 mainly spearheaded by the RT Vanderbilt Company who</p> <p>12 sells large tonnage of trimellitic talc to the</p> <p>13 ceramic industries here and abroad."</p> <p>14 And, Dr. Hopkins, you know that</p> <p>15 Johnson &amp; Johnson actually attended some meetings</p> <p>16 with RT Vanderbilt, right?</p> <p>17 A. I believe RT Vanderbilt attended</p> <p>18 meetings with the Food and Drug Administration at</p> <p>19 which Johnson &amp; Johnson was also present.</p> <p>20 Q. So in this memo, Bill Ashton says</p> <p>21 "fibrous tremolite," right? It says "fibrous</p> <p>22 tremolite." "Fibrous," which is called tremolite</p> <p>23 asbestos, right? Correct, sir?</p> <p>24 A. Yeah, if it meets the definition of</p> <p>25 tremolite asbestos, it would be asbestos.</p>	<p style="text-align: right;">Page 76</p> <p>1 Does that look like 5.2?</p> <p>2 A. Yes.</p> <p>3 Q. Fiber minerals amphiboles. And it</p> <p>4 says, "as the description of the mineralogical</p> <p>5 processes involved in the formation of talc may have</p> <p>6 shown, amphiboles are possible contaminants. These</p> <p>7 include tremolite, anthophyllite, actinolite, et</p> <p>8 cetera. Tremolite, the most common amphibole</p> <p>9 contaminant occurs only rarely as the fibrous form</p> <p>10 and the varieties of massive tremolite which under</p> <p>11 the microscope appear to contain fibers commonly</p> <p>12 comprise mainly thick fibers or cleavage fragments</p> <p>13 which do not present the same health hazard."</p> <p>14 "However --</p> <p>15 MS. SULLIVAN: And you left out "as</p> <p>16 asbestos."</p> <p>17 MR. PANATIER: "As asbestos."</p> <p>18 BY MR. PANATIER:</p> <p>19 Q. "However, in order to eliminate any</p> <p>20 hazard to the consumer which might arise from the</p> <p>21 need to interpret fiber shape and dimensions and to</p> <p>22 facilitate routine screening the CTPA view is that</p> <p>23 if an amphibole is detected by X-ray diffraction</p> <p>24 that batch of talc is unacceptable for cosmetic use</p> <p>25 whether or not subsequent examination by optical or</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. And what Bill Ashton says here is,</p> <p>2 "Fibrous which is called tremolite asbestos,"</p> <p>3 correct?</p> <p>4 A. That's what is written.</p> <p>5 Q. Okay. And you agree with that,</p> <p>6 right?</p> <p>7 A. Well, as I said, tremolite asbestos</p> <p>8 is a fibrous form as opposed to a rod form or like</p> <p>9 my pencil.</p> <p>10 Q. And let's look at what he quotes what</p> <p>11 Dr. Pooley said in the CTPA.</p> <p>12 So Dr. Pooley was, actually, writing the</p> <p>13 CTPA guide in England, correct?</p> <p>14 A. He was part of a -- several people</p> <p>15 who were writing a first draft, yes.</p> <p>16 Q. Oh, was this just a first draft?</p> <p>17 A. Well, I don't know on that date</p> <p>18 whether it was a draft or what. I don't -- yeah, my</p> <p>19 cover letter said I showed bill a draft of the CPTA</p> <p>20 guide for his comment.</p> <p>21 Q. Okay. My question was, is it a first</p> <p>22 draft, what you said?</p> <p>23 A. Well, I don't know whether it was a</p> <p>24 first draft or second draft. It was a draft.</p> <p>25 Q. So under section -- is that 5.2?</p>	<p style="text-align: right;">Page 77</p> <p>1 electromicroscopy shows that the contaminant is not</p> <p>2 fibrous. In this respect, the CTPA specification is</p> <p>3 even more stringent than others which refer only to</p> <p>4 fibrous amphiboles."</p> <p>5 Now that's consistent with what you</p> <p>6 testified to about if there was a presence of</p> <p>7 amphiboles by XRD at J&amp;J, it was to be rejected,</p> <p>8 correct?</p> <p>9 A. No. It's not consistent. What I</p> <p>10 said in the J&amp;J specification, and you know this, is</p> <p>11 that if you find amphibole by X-ray diffraction, you</p> <p>12 put the whole thing on hold. You reject it until</p> <p>13 you can show that the amphibole was the harmless</p> <p>14 form or the rod form of tremolite or whatever it may</p> <p>15 be, but not the fibrous one that looks flexible like</p> <p>16 human hair, that's asbestos. But in rod or cleavage</p> <p>17 form, it looks like, than it's not asbestos. So you</p> <p>18 do the microscope piece. You look at it under a</p> <p>19 microscope.</p> <p>20 Q. We will get to all that. Well, let's</p> <p>21 compare what you said with this.</p> <p>22 Here's what you said. "If it's positive by</p> <p>23 XRD, it would be rejected. That is your belief,</p> <p>24 right?</p> <p>25 And I asked, "And by 'XRD,' you're just</p>

<p style="text-align: right;">Page 78</p> <p>1 detecting the mineral, correct?</p> <p>2 "Yes, that was grounds for rejection.</p> <p>3 That's the specification."</p> <p>4 Now we're looking at what Dr. Pooley</p> <p>5 said. "Presence of XRD should be grounds for</p> <p>6 rejection," correct?</p> <p>7 A. In this draft that you're referring</p> <p>8 to --</p> <p>9 MR. PANATIER: Your Honor, at this</p> <p>10 time I would object to non-responsive.</p> <p>11 THE WITNESS: I'm sorry.</p> <p>12 MR. PANATIER: I would just like a</p> <p>13 yes or no.</p> <p>14 THE COURT: Please answer the</p> <p>15 question.</p> <p>16 A. Yeah. Would you rephrase the</p> <p>17 question. I'm getting lost.</p> <p>18 Q. Yes. Dr. Pooley is saying that the</p> <p>19 presence of the mineral at all is grounds for</p> <p>20 rejection, correct?</p> <p>21 A. That's what he is saying on that</p> <p>22 draft -- first draft, yes.</p> <p>23 Q. Well, you know that's the current</p> <p>24 specification for the CTPA, don't you?</p> <p>25 A. No, it isn't.</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Okay. Great. So just so we can get</p> <p>2 our bearings a little bit, if you'll just turn to</p> <p>3 the first page.</p> <p>4 MS. SULLIVAN: Your Honor, I'm going</p> <p>5 to object because of the time frame here.</p> <p>6 THE COURT: Objection overruled.</p> <p>7 You can go, proceed.</p> <p>8 BY MR. PANATIER:</p> <p>9 Q. Do you see under "Acknowledgment,"</p> <p>10 sir?</p> <p>11 A. Yes.</p> <p>12 Q. It says, "The Cosmetic, Toiletry and</p> <p>13 Perfumery Association wishes to thank members of the</p> <p>14 CTPA talc task force for their time and enthusiasm</p> <p>15 in preparing the latest revision of this document."</p> <p>16 And who is the last person listed?</p> <p>17 A. Myself.</p> <p>18 Q. You?</p> <p>19 A. Yes.</p> <p>20 Q. John Hopkins?</p> <p>21 A. Yes.</p> <p>22 Q. Innovant Research, right?</p> <p>23 A. Yes.</p> <p>24 MR. PANATIER: Your Honor, we offer</p> <p>25 this into evidence.</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. When did it change?</p> <p>2 A. I don't know. But I looked more</p> <p>3 recently and it's not the current specification.</p> <p>4 Q. What's "the current specification"?</p> <p>5 A. You would have to go on their website</p> <p>6 and look it up.</p> <p>7 Q. Aren't you on the committee that</p> <p>8 helps with that specification?</p> <p>9 A. Yes. I'm on -- I'm on a scientific</p> <p>10 committee, yes.</p> <p>11 Q. Well, let's look at the 2016 version,</p> <p>12 okay?</p> <p>13 A. Well, why don't we look at 2018 or</p> <p>14 '19 version.</p> <p>15 Q. This was the only one I as able to</p> <p>16 get, but we can look at -- we can look and see if</p> <p>17 they changed it after 2016, okay?</p> <p>18 A. Okay.</p> <p>19 (There is a discussion off the</p> <p>20 record.)</p> <p>21 Q. It should be right in the back of</p> <p>22 your Binder 4. It should be dated 2016. It should</p> <p>23 be entitled "Cosmetic Talc a CTPA Guide." Do you</p> <p>24 have that?</p> <p>25 A. I do, yes.</p>	<p style="text-align: right;">Page 81</p> <p>1 MS. SULLIVAN: It's for 2016.</p> <p>2 THE COURT: Sidebar.</p> <p>3 (Sidebar.)</p> <p>4 THE COURT: The purpose for which</p> <p>5 you're seeking admission?</p> <p>6 MR. PANATIER: Yes, it's to impeach</p> <p>7 the witness for purposes of what he just said, that</p> <p>8 it's not part of the -- it's not of the protocol.</p> <p>9 He's trying to fight it. In 2016 he tried to fight</p> <p>10 it, in 2017 in his depo.</p> <p>11 MS. SULLIVAN: The protocol in 2016</p> <p>12 has nothing to do with this case, your Honor.</p> <p>13 MR. PANATIER: There was exposure in</p> <p>14 2016.</p> <p>15 THE COURT: Okay. Well, even if</p> <p>16 there wasn't exposure, for the sake of argument, in</p> <p>17 2016, I'm allowing its admission for purposes of</p> <p>18 impeaching credibility based upon the testimony of</p> <p>19 this witness relative to that Bill Ashton memo to</p> <p>20 him referencing the CTPA guide and the language at</p> <p>21 issue.</p> <p>22 MS. SULLIVAN: I don't see where the</p> <p>23 impeachment is. I don't understand. All he showed</p> <p>24 was the acknowledgment.</p> <p>25 THE COURT: Do you want to show</p>

<p style="text-align: right;">Page 82</p> <p>1 Counsel?</p> <p>2 MR. PANATIER: Yeah. I haven't gone</p> <p>3 into it further yet; Page 13 and Page 16, where it</p> <p>4 says the exact same thing.</p> <p>5 MS. SULLIVAN: This is consistent,</p> <p>6 your Honor. It says, tremolite occurs only rarely</p> <p>7 in fibrous forms. It's not inconsistent and I'll</p> <p>8 object because it's not proper impeachment.</p> <p>9 MR. PANATIER: Your Honor, amphibole</p> <p>10 detected by X-ray diffraction that matches</p> <p>11 unacceptable or cosmetic uses --</p> <p>12 THE COURT: As for impeachment</p> <p>13 purposes. Thank you.</p> <p>14 (Sidebar ends.)</p> <p>15 BY MR. PANATIER:</p> <p>16 Q. Doctor, is it your --</p> <p>17 THE COURT: Hold on a second.</p> <p>18 MR. PANATIER: I'm sorry.</p> <p>19 THE COURT: This document has been</p> <p>20 offered into admission. The Court now accepts it</p> <p>21 into admission.</p> <p>22 (Plaintiff's Exhibit 3695-14 was moved</p> <p>23 into evidence.)</p> <p>24 MR. PANATIER: Thank you, your Honor.</p> <p>25 It's Exhibit 3695-14.</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Let's see if the rest is consistent.</p> <p>2 "However, in order to eliminate any hazard to the</p> <p>3 consumer, which might arise from the need to</p> <p>4 interpret fiber shape and dimensions and to</p> <p>5 facilitate routine screening, the CTPA view is that</p> <p>6 if an amphibole is detected by X-ray diffraction,</p> <p>7 that batch of talc is unacceptable for cosmetic use</p> <p>8 whether or not subsequent examination by optical or</p> <p>9 electromicroscopy shows that the contaminant is not</p> <p>10 fibrous." Did I read that right?</p> <p>11 A. You did.</p> <p>12 Q. And look here's from the previous</p> <p>13 exhibit. Can you see that up on the screen, sir?</p> <p>14 A. Yes.</p> <p>15 Q. It says the same thing.</p> <p>16 A. It does. But there is an explanation</p> <p>17 and I'm happy to give it.</p> <p>18 Q. Sir, this is 20 consistent years from</p> <p>19 1996 to 2016 where they're saying the same thing,</p> <p>20 correct?</p> <p>21 A. They're saying the same thing and</p> <p>22 there is an explanation and I'm happy to give it.</p> <p>23 If you --</p> <p>24 Q. And you gave that explanation --</p> <p>25 A. -- if you will allow me.</p>
<p style="text-align: right;">Page 83</p> <p>1 BY MR. PANATIER:</p> <p>2 Q. Now, Dr. Hopkins, barring some</p> <p>3 C-change in the CTPA between 2016 and now, let's</p> <p>4 look at this.</p> <p>5 Let's take a look at Page 14. Okay. Tell</p> <p>6 me when you're there. And if it's helpful, it's up</p> <p>7 there, too.</p> <p>8 A. It's okay. No, I got Page 14, yeah.</p> <p>9 Q. Alright. Now, it says, "As the</p> <p>10 description of the mineralogical processes involved</p> <p>11 in the formation of talc may have shown, amphiboles</p> <p>12 are possible contaminants, these include tremolite,</p> <p>13 anthophyllite, actinolite, et cetera. Tremolite the</p> <p>14 most common amphibole contaminant occurs only rarely</p> <p>15 as the fibrous form and the varieties of massive</p> <p>16 tremolite, which under the microscope appear to</p> <p>17 contain fibers, commonly comprise mainly thick</p> <p>18 fibers or cleavage fragments which do not present</p> <p>19 the same hazard as asbestos."</p> <p>20 Now, first of all, that's exactly</p> <p>21 what he said in 1996 in the letter you got, isn't</p> <p>22 it?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 A. Yes. Yes --</p>	<p style="text-align: right;">Page 85</p> <p>1 THE COURT: Hold on.</p> <p>2 THE WITNESS: Sorry.</p> <p>3 THE COURT: It's okay.</p> <p>4 MS. SULLIVAN: I object to the</p> <p>5 interruption.</p> <p>6 THE COURT: There is no question</p> <p>7 pending.</p> <p>8 Proceed.</p> <p>9 MR. PANATIER: Thank you, your Honor.</p> <p>10 BY MR. PANATIER:</p> <p>11 Q. You gave that explanation for the</p> <p>12 first time today, you did not give that explanation</p> <p>13 when I depose you in 2017, did you?</p> <p>14 A. I have given the explanation -- the</p> <p>15 test methodology requires you to do X-ray</p> <p>16 diffraction followed by polarized light microscopy</p> <p>17 and, if necessary, by other microscope methods.</p> <p>18 (There is a discussion off the</p> <p>19 record.)</p> <p>20 Q. We know this. Johnson &amp; Johnson</p> <p>21 never rejected a single lot for the presence of</p> <p>22 amphibole or amphibole asbestos, correct? Correct?</p> <p>23 A. If a lot had failed the</p> <p>24 specification, which is the test using X-ray</p> <p>25 diffraction for amphibole followed by polarized</p>

<p style="text-align: right;">Page 86</p> <p>1 light microscopy and transmission electron 2 microscopy, if it had failed those tests, which 3 would have picked up asbestos, it would have been 4 rejected. 5 Q. No lot was ever rejected, correct? 6 A. I don't know whether a lot was 7 rejected or not. It could well have gone into 8 industrial talc. I'm not going to speculate. But 9 any lot that fails those three tests would not have 10 been used to make baby powder. 11 THE COURT: This would be a good time 12 for a break, Counsel. 13 MR. PANATIER: That's fine. 14 THE COURT: Alright. So Members of 15 the Jury, we're going to take a 15-minute break. No 16 discussions with regard to this case, including the 17 testimony you've just heard. No research of any 18 kind whatsoever. 19 Please be ready to come back upstairs 20 at five after. Enjoy your break. 21 (Jury exits.) 22 THE COURT: And we're off the record. 23 Dr. Hopkins, you may step down. 24 THE WITNESS: Thank you. 25 (Recess taken 10:50 to 11:12 a.m.)</p>	<p style="text-align: right;">Page 88</p> <p>1 A. Yes. And I explained until you've 2 done otherwise. 3 Q. Okay. Well, if you would turn to the 4 tab. Actually, I think it's there already. I 5 turned it there for you. 6 December 28, 2016, you got that tab? 7 The title is the, "The Process for Qualification and 8 Approval of a New or Alternate Source of Cosmetic 9 Talc"? 10 A. Yes. 11 Q. Okay. That's a document you authored 12 correct? 13 A. Yes, I gave guidance to an affiliate 14 in, I think, it's Indonesia as to their thinking 15 process, yes. 16 Q. The title is, "The Process for 17 Qualification and Approval of a New Or Alternate 18 Source of Cosmetic Talc" and it regards the global 19 specification, correct? 20 A. I don't see that title. 21 Q. Okay. Well -- 22 A. Let me read it. 23 Q. We'll look at it together. 24 MR. PANATIER: Your Honor, I offer 25 this in evidence.</p>
<p style="text-align: right;">Page 87</p> <p>1 (Jury enters.) 2 THE COURT: Please be seated. Make 3 sure cell phones are turned off. 4 You may continue. 5 MR. PANATIER: Thank you, your Honor. 6 Q. So, Dr. Hopkins, at this point we 7 have documentation, a policy to reject anything with 8 amphiboles. We have that from 1996 CTPA, correct? 9 A. That's the British -- 10 Q. Yes. 11 A. -- document. That is their document, 12 yes. But, as I said, I'm happy to give an 13 explanation why but -- 14 MR. PANATIER: Your Honor, I'm going 15 to object at this time to nonresponsive and move to 16 strike. 17 A. The answer is, yes. 18 THE COURT: Thank you, Dr. Hopkins. 19 Q. We also saw 2016 CTPA, same policy, 20 correct? 21 A. We did, yes. 22 Q. Also, we have your testimony from 23 2017 where you said presence by XRD, which only 24 detects the amphiboles would be grounds for 25 rejection, correct?</p>	<p style="text-align: right;">Page 89</p> <p>1 THE COURT: Any objection? 2 MS. SULLIVAN: Your Honor, just a 3 sidebar on this. 4 THE COURT: Sure. 5 MS. SULLIVAN: Thank you. 6 THE COURT: Just to be clear, this is 7 2836 being offered? 8 MR. PANATIER: 2836. 9 THE COURT: Okay. 10 (Sidebar.) 11 MS. SULLIVAN: Your Honor, I'm just 12 going to object. The last document was a London 13 2016 standard that has been (INAUDIBLE). This is an 14 Indonesian, you know, again post-dating the time 15 frame at issue in this case and the recommendations. 16 It's not relevant under the time period at issue and 17 we would object to the document. 18 THE COURT: And the basis for which 19 you're seeking to introduce this? 20 MR. PANATIER: Right here. Dr. 21 Hopkins stated there are certain parameters for 22 which a minimum standard must be maintained on a 23 global basis. These consist of freedom from 24 asbestos and amphibole minerals. 25 MR. MAIMON: We also have evidence,</p>

<p style="text-align: right;">Page 90</p> <p>1 your Honor, this document was used by J&amp;J for its 2 specification for Johnson's Baby Powder everywhere 3 in the world including the United States and I 4 deposited one of their officials on this based just on 5 the document's fact. 6 THE COURT: Based on the document and 7 how it reads, I'm going to admit it into evidence. 8 It does not exceed use; in other words, it's not 9 just looking outside of the country. It's also 10 being what's specified on a global basis. 11 MS. SULLIVAN: Thank you, your Honor. 12 (Sidebar ends.) 13 THE COURT: This document is now 14 admitted into evidence. 15 You may proceed. 16 (Plaintiff's Exhibit 2836 was moved 17 into evidence.) 18 MR. PANATIER: Thank you, your Honor. 19 BY MR. PANATIER: 20 Q. This is a document you John Hopkins 21 offered, right? 22 A. Yes, in response to a question, yes. 23 Q. And it says, "Cosmetic grades of talc 24 to be used in Johnson &amp; Johnson products must meet 25 standards for both mineralogical and microbial</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. The truth is there is a robust 2 history of amphibole minerals in Johnson &amp; Johnson's 3 talc that they used for baby powder, correct? 4 A. You can find nonasbestos amphibole 5 minerals in pretty well every county in the United 6 States and you will find nonasbestos amphibole 7 material in many talc sources from around the world. 8 MR. PANATIER: Your Honor, I'm going 9 to move to strike. 10 A. Sorry, didn't I answer the question? 11 THE COURT: No. Doctor, if you could 12 please listen to the question and answer that 13 question only. 14 Why don't we do it one more time. 15 Q. If you'll turn, please, sir, back to 16 the deposition binder, the first deposition 17 8/15/2017, Page 311. It's, actually, 312. Sorry, 18 these print over a page. Page 312, starting with 19 Line 8. 20 MS. SULLIVAN: I'm just going to 21 object because it's not inconsistent with what he 22 just said. 23 THE COURT: I'm sorry, beginning 24 where? 25 MR. PANATIER: Page 312/Line 8</p>
<p style="text-align: right;">Page 91</p> <p>1 purity," correct? 2 A. Yes. 3 Q. That's true for the whole world, 4 correct? 5 A. Yes. 6 Q. Let's go down here to your bullet 7 point. "There are, however, certain parameters for 8 which a minimum standard must be maintained on a 9 global basis." 10 "Global" includes the United States, 11 correct? 12 A. Yes. 13 Q. Okay. "These consist of No. 1 14 freedom from asbestos and amphibole minerals," 15 correct? 16 A. Yes, that's what I wrote. And I'm 17 happy to explain why I wrote that. 18 Q. Well, I just want to talk about what 19 you wrote. 20 You wrote in 2005, on a global basis, 21 no asbestos and no amphibole minerals, correct, did 22 you write that? 23 A. I wrote that. And I'm happy to 24 explain why I wrote that to that individual in, I 25 believe, Indonesia.</p>	<p style="text-align: right;">Page 93</p> <p>1 through 12. 2 THE COURT: Objection overruled. 3 You may proceed. 4 MR. PANATIER: 5 Q. Okay. Doctor, I asked you this 6 question. "We were discussing a document at the 7 time. 8 Well, he probably mentioned tremolite 9 because as we know there's a very robust record of 10 the mineral tremolite being present in the ores that 11 Johnson &amp; Johnson uses, correct?" 12 And what was your answer? 13 A. I'm sorry, what page are we on? 14 Q. Page 312. 15 A. What line? 16 Q. Line 8 through 12. 17 A. Okay. Sorry. The print is blurred. 18 Yeah. 19 Q. Is your print "blurred"? 20 A. Yeah, yeah. It says, "As we know, 21 there is a very robust record of the mineral," and 22 then there's nothing. 23 Q. Let me give you mine, if it's 24 blurred. 25 A. Yeah, we can swap then.</p>

<p style="text-align: right;">Page 94</p> <p>1 Q. Hold on.</p> <p>2 A. See there's nothing there?</p> <p>3 Q. Yeah, here, look at my copy.</p> <p>4 A. Okay.</p> <p>5 Q. So, when I asked you, if there was a</p> <p>6 robust record of tremolite in the source talc for</p> <p>7 Johnson's Baby Powder, your answer was what?</p> <p>8 A. Yeah, correct, yeah. I just said</p> <p>9 that a few minutes ago.</p> <p>10 Q. There was a robust record, correct?</p> <p>11 A. Of tremolite, yes.</p> <p>12 Q. Okay. For CTPA in 1996, 2016 your</p> <p>13 global specification they all said no amphibole</p> <p>14 minerals.</p> <p>15 My question is tremolite is an amphibole</p> <p>16 mineral, correct?</p> <p>17 A. My global specification was not a</p> <p>18 global specification.</p> <p>19 MR. PANATIER: Your Honor, I'm going</p> <p>20 to object as nonresponsive.</p> <p>21 MS. SULLIVAN: He didn't even answer</p> <p>22 before you decided it's nonresponsive.</p> <p>23 MR. PANATIER: I asked if tremolite</p> <p>24 was an amphibole.</p> <p>25 THE COURT: That response is stricken</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. And you know that Battel found</p> <p>2 tremolite in the Italian source or for Johnson's</p> <p>3 baby powder several hundred times, correct?</p> <p>4 A. They found tremolite, not asbestos</p> <p>5 tremolite. They found tremolite, yes.</p> <p>6 MR. PANATIER: Your Honor, I move to</p> <p>7 strike. I asked whether they found tremolite.</p> <p>8 A. The answer is, yes.</p> <p>9 THE COURT: Thank you, Doctor.</p> <p>10 Q. Alright. Alright. Several hundred</p> <p>11 times, correct?</p> <p>12 A. They found tremolite.</p> <p>13 Q. There is extensive testing</p> <p>14 demonstrating tremolite in both the Italian and</p> <p>15 Vermont ore, correct?</p> <p>16 A. Yeah.</p> <p>17 Q. And by the early 1970s Johnson &amp;</p> <p>18 Johnson had numerous reports of tremolite in both,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. So I brought up Bill Ashton before</p> <p>22 and I wrote down last night a series of people which</p> <p>23 might help us speed this up, okay. So can you see</p> <p>24 my list of people here?</p> <p>25 A. I need my driving glasses.</p>
<p style="text-align: right;">Page 95</p> <p>1 from the record.</p> <p>2 Can you ask the question one more</p> <p>3 time.</p> <p>4 MR. PANATIER: Yes.</p> <p>5 THE COURT: Please listen to the</p> <p>6 question, Dr. Hopkins.</p> <p>7 Q. Is tremolite an amphibole?</p> <p>8 A. Tremolite is an amphibole.</p> <p>9 Q. Okay. Anthophyllite is an amphibole,</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. Actinolite is an amphibole?</p> <p>13 A. They all are, yes.</p> <p>14 Q. Chrysotile is a different type of</p> <p>15 mineral, it's serpentine, correct?</p> <p>16 A. It is serpentine, yes.</p> <p>17 Q. Chrysotile -- anytime you see a</p> <p>18 reference to chrysotile, we don't have to talk</p> <p>19 whether it's good rock or a bad rock, that's</p> <p>20 asbestos always, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Sir, we have heard a little bit in</p> <p>23 this case about the Battel Memorial Altitudes.</p> <p>24 You're familiar with Battel, correct?</p> <p>25 A. I am, yes, yes.</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. Yeah. Can you --</p> <p>2 A. Yes.</p> <p>3 Q. Can you read them okay?</p> <p>4 A. I can read them, yes.</p> <p>5 Q. So, as documents come up, this might</p> <p>6 help us keep track of the cast of characters, okay?</p> <p>7 A. Yes.</p> <p>8 Q. And I've entitled this, "J&amp;J People</p> <p>9 Involved in Talc Asbestos," with the caveat that</p> <p>10 there are others, right?</p> <p>11 A. Probably.</p> <p>12 Q. You're not on there, right, you</p> <p>13 weren't?</p> <p>14 A. Yeah, yeah.</p> <p>15 Q. So, just to get straight -- and I'd</p> <p>16 love if you correct me if any of these are incorrect</p> <p>17 and we can mark it out and we can make an</p> <p>18 adjustment. But let's just go through them. This</p> <p>19 will save us time moving forward as we go through</p> <p>20 the documents, okay?</p> <p>21 A. Okay.</p> <p>22 Q. Is that alright?</p> <p>23 Alright. Bill Ashton, senior science, head</p> <p>24 of talc, someone who you said was regarded as</p> <p>25 Mr. Talc, correct?</p>

<p style="text-align: right;">Page 98</p> <p>1 A. Yes, he's an expert geologist, yes.</p> <p>2 Q. David R. Clare, he was the President</p> <p>3 of J&amp;J?</p> <p>4 A. He was at one time, yes.</p> <p>5 Q. In the '70s?</p> <p>6 A. Generally around '76, as I recollect,</p> <p>7 yes.</p> <p>8 Q. Al Goudie was a J&amp;J physician,</p> <p>9 correct?</p> <p>10 A. As a scientist.</p> <p>11 Q. Was he not a physician?</p> <p>12 A. No.</p> <p>13 Q. He was not?</p> <p>14 A. I don't believe he was. I think he</p> <p>15 was a scientist.</p> <p>16 Q. Okay. Well, we'll -- I'm not going</p> <p>17 to mark it up. I'm going to put that in parentheses</p> <p>18 because I think we might see a document on that, but</p> <p>19 I'm going to write "scientist" and we'll put a</p> <p>20 little question mark over "physician."</p> <p>21 DD Johnston, President of J&amp;J Baby Products</p> <p>22 Company, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Gavin Hildick-Smith was the Director</p> <p>25 of Medical Affairs?</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Roger Miller he was the President of</p> <p>2 Windsor Minerals. That was the company that Johnson</p> <p>3 &amp; Johnson owned that mined the Vermont talc?</p> <p>4 A. The mining company, yes.</p> <p>5 Q. W. Nashed, now, do you know what his</p> <p>6 first name was?</p> <p>7 A. I've forgotten. I do know, but it's</p> <p>8 slipped my mind.</p> <p>9 Q. If I knew it, I would have written</p> <p>10 it.</p> <p>11 But Dr. Nashed, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And he was the Director of Science</p> <p>14 Information, true?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. He had a big role when it came</p> <p>17 to talc and asbestos, did he not?</p> <p>18 A. He was a coordinator. He was kind of</p> <p>19 a central point and correspondence would go in and</p> <p>20 go out.</p> <p>21 Q. D.R. Petterson medical director baby</p> <p>22 products, right?</p> <p>23 A. He was, yes.</p> <p>24 Q. Robert Rolle, Assistant Director</p> <p>25 Analytical Research Baby Powder Products, true?</p>
<p style="text-align: right;">Page 99</p> <p>1 A. Yes, he was an MD, yeah.</p> <p>2 Q. And he was an MD, okay. We'll put</p> <p>3 "MD."</p> <p>4 General Johnson, there was actually -- so</p> <p>5 was he a general, had he been a general?</p> <p>6 A. He was a World War II general, yes.</p> <p>7 Q. Did he have a first name?</p> <p>8 A. I can't remember. He did, obviously.</p> <p>9 Q. Yeah. I don't know it.</p> <p>10 A. I can't remember it now.</p> <p>11 Q. But they always refer to him General</p> <p>12 Johnson.</p> <p>13 But he's not like Johnson &amp; Johnson Johnson,</p> <p>14 is he?</p> <p>15 A. He was the grandson of the founder,</p> <p>16 yes, or great grandson.</p> <p>17 Q. He was an executive, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And George Lee was the Director of</p> <p>20 Applied Research, true?</p> <p>21 A. Yes.</p> <p>22 Q. Tim McCarthy, he's more recent. He</p> <p>23 was the Director of Toxicology for baby R&amp;D and</p> <p>24 products stewardship, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 101</p> <p>1 A. Yes.</p> <p>2 Q. John Scheltz he was the CTPA task</p> <p>3 force chairman on the committee to develop J4-1,</p> <p>4 correct?</p> <p>5 A. He was 1 of 20 people on that</p> <p>6 committee, yes.</p> <p>7 Q. He was the chairperson?</p> <p>8 A. He was chairperson, yes.</p> <p>9 Q. Bruce Semple, he's more recent,</p> <p>10 correct?</p> <p>11 A. Yeah, he's an MD.</p> <p>12 Q. And he was a medical director?</p> <p>13 A. He was at one point, yes.</p> <p>14 Q. T.H. Shelley Research Director,</p> <p>15 right?</p> <p>16 A. He was, yeah.</p> <p>17 Q. Lorena Telofski more recent again,</p> <p>18 she's the scientific engagement leader, correct?</p> <p>19 A. Well, that's the title you've got</p> <p>20 there. I don't know what the current title is but,</p> <p>21 yes. I'll not argue.</p> <p>22 Q. In fairness, there's some documents</p> <p>23 in the mid 2000s that she's uses the NATRA title at</p> <p>24 the time, okay?</p> <p>25 A. Okay, yeah.</p>

<p style="text-align: right;">Page 102</p> <p>1 Q. Charles -- I can't say that -- 2 W-a-h-s-c-z-u-k? 3 A. I think it's pronounced Wajsczuk, but 4 I don't know him. 5 Q. Okay, great; medical Safety Officer, 6 right? 7 A. Yeah. 8 Q. Okay. Alright. So this might help 9 us keep our bearings as we move forward. 10 Now, sir, Johnson &amp; Johnson understands that 11 talc, specifically, for use on babies but really for 12 all purposes has no medicinal benefit, right? 13 A. It's not a therapeutic medicinal, no, 14 there's no -- 15 Q. It doesn't have -- 16 A. It doesn't treat nor cure disease. 17 Q. It doesn't have any health benefits? 18 A. It helps cool the skin and keeps the 19 skin from chaffing. It's -- call it dry lubricant. 20 The talc particles slide over each other so they 21 help stop chaffing but -- 22 Q. Okay. Other than that -- 23 A. -- it's not medicinal, I don't know. 24 Q. Other than chaffing, does it have any 25 health benefits, sir?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. They referred to it as the 2 cornerstone of their baby products franchise, 3 correct? 4 A. It was the first baby product, yes. 5 Q. They've even referred to it as the 6 sacred cow, right? 7 A. I've heard that expression from one 8 individual. 9 Q. Right; in the Johnson &amp; Johnson 10 documents, true? 11 A. Yes. 12 Q. Okay. So let's look at this document 13 it's dated 1966. It is from W.H. Steinberg to Gavin 14 Hildick-Smith, okay, Director of Medical Affairs, 15 correct? 16 A. Yes. 17 MR. PANATIER: Alright. I'm going to 18 offer this into evidence, your Honor, Exhibit 2360. 19 MS. SULLIVAN: Your Honor, this was 20 in limine issue and it's also -- 21 THE COURT: Sidebar. 22 (Sidebar.) 23 THE COURT: What's the in limine 24 issue? 25 MS. SULLIVAN: This was other adverse</p>
<p style="text-align: right;">Page 103</p> <p>1 A. I'm not aware of any curative -- 2 disease curative benefits, no. It's a skin dry 3 lubricant. 4 Q. You can turn, please, sir, it's going 5 to be in the big binder to June 17, 1966. It should 6 be near the front. Here it is. 7 Now, first of all, Johnson &amp; Johnson refers 8 to the baby powder. It's an important product to 9 Johnson &amp; Johnson, right? 10 A. Yes, it's been sold for over hundred 11 years. 12 Q. It's not one that they ever made -- I 13 mean, they ever made a ton of money from relatively 14 speaking, right? 15 A. No, virtually none. 16 Q. It was far more important to Johnson 17 &amp; Johnson in terms of reputation, correct? 18 A. Yes, it was a historical product. 19 Q. Johnson &amp; Johnson? 20 A. From the 1890s. 21 Q. I'm sorry? 22 A. From the 1890s. 23 Q. Johnson &amp; Johnson referred to the 24 baby powder as their flagship product, correct? 25 A. I've seen that expression, yes.</p>	<p style="text-align: right;">Page 105</p> <p>1 -- it's like a cancer -- this is the asphyxiation 2 issue. It has nothing to do with mesothelioma. 3 These are the kids that choked or asphyxiated 4 because of the blocking air, yeah, from the powder. 5 It's a 403 issue and it's also hearsay, of course. 6 MR. PANATIER: First of all, it's 7 here to -- to address hearsay within hearsay goes to 8 notice. 9 Second of all, as far as the overall 10 safety -- 11 THE COURT: Wait a minute. One 12 person at a time. 13 MR. PANATIER: Overall safety Counsel 14 for Johnson &amp; Johnson brought this up in opening 15 statement. She said the product is safe and it goes 16 to the fact that if they had heeded the doctor's 17 warnings for whatever reason and they stopped 18 selling the product, we don't have this case. 19 MS. SULLIVAN: This is -- 20 THE COURT: So that's the issue? 21 MR. PANATIER: That's correct. 22 THE COURT: Thank you. 23 MS. SULLIVAN: This is notice as 24 asphyxiation from blocking. It has nothing to do 25 with cancer and mesothelioma.</p>

<p style="text-align: right;">Page 106</p> <p>1 MR. PANATIER: Great point. It's 2 actually -- 3 MS. SULLIVAN: And it's hearsay. 4 This is hearsay within hearsay. 5 MR. PANATIER: Actually, in opening 6 Counsel argued that they put warnings on because 7 babies would poured it over their faces. 8 THE COURT: Okay. I'm going to allow 9 it. It goes to the issue of notice. 10 Now having said that, this is not 11 what you pointed to Ms. Sullivan's opening statement 12 but it does not open the door -- 13 MR. PANATIER: To anything. No, not 14 I'm not doing that. 15 THE COURT: I want to be clear on 16 that. 17 And in terms of the hearsay upon 18 hearsay, so this is commenting upon an article in 19 (INAUDIBLE) corporate of spokesperson what issue 20 that you are looking to point out is, is what? 21 MR. PANATIER: Is the hazard that 22 they were aware of, your Honor. 23 MS. SULLIVAN: Which had nothing to 24 do with cancer. 25 MR. PANATIER: It has no health</p>	<p style="text-align: right;">Page 108</p> <p>1 Vermont mine, correct? 2 A. Yes. 3 Q. So "the cornerstone of our baby 4 powder's franchise" and "we have a large investment 5 in talc mine," Mr. Steinberg felt were important to 6 state when discussing this article about the 7 aspiration of talc for children, correct? 8 A. Yeah, you read what was written. 9 Q. And he quotes the article. "In 10 conclusion, it is strongly urged that talcum powder 11 be removed from the environment of children and that 12 the traditional association of talcum powder and 13 babies be abandoned. It has no medicinal value 14 wherever placed. It serves as a foreign body and, 15 at least, three deaths in an unknown morbidity of 16 resulted from this talcum powder." 17 Now "morbidity" means sickness or illness, 18 correct? 19 A. Yes. 20 Q. Okay. He writes, "Would it be 21 possible for us to initiate basic work to explore 22 this phenomenon either to obtain data to refute this 23 problem or to develop mechanisms to reduce the 24 hazard?" Is that what he writes? 25 A. Yes. He commented on what was</p>
<p style="text-align: right;">Page 107</p> <p>1 benefit, which we are talking about. 2 MR. SULLIVAN: Which he's already 3 testified -- 4 THE COURT: Thank you. 5 MS. SULLIVAN: Thank you, your Honor. 6 MR. PANATIER: Thank you. 7 (Sidebar ends.) 8 MR. PANATIER: It's 2360, your Honor. 9 THE COURT: Yes, now admitted into 10 evidence. 11 (Plaintiff's Exhibit 2360 was moved 12 into evidence.) 13 Q. Now, sir, let's take a peak at this 14 together. It says, "subject Johnson's baby powder 15 talc aspiration." That means breathing in, right? 16 A. In context, it's blocking your nose, 17 yes. 18 Q. "Reference is made to the attached 19 note from Mr. J. Detry forwarding an article by Drs. 20 Hughes and Colmer which appeared in June 1966 21 American Journal of Diseases of Children. Baby 22 powder represents the cornerstone of our baby 23 products franchise. In addition we have a large 24 investment in the talc mine." 25 At this point they had already bought the</p>	<p style="text-align: right;">Page 109</p> <p>1 written in the American Journal of Disease of 2 Children and then wrote what you read, yeah. 3 Q. Okay, okay. So Johnson &amp; Johnson was 4 aware that doctors were recommending against the use 5 of baby powder as of 1966, true? 6 A. Well, these particular doctors 7 responding to cases where children had choked or got 8 powder on their nose would breathe that comet. So 9 that is noted in the Johnson's files, yes. 10 Q. When did Johnson &amp; Johnson first add 11 a safety lid to prevent that to its baby powder? 12 A. A safety lid? 13 Q. A safety cap to prevent from children 14 opening it and pouring on their faces and aspiring 15 talc? 16 A. Well, there's always been a lid with 17 little holes in. The issue is the size of the 18 holes. 19 Q. Yeah. 20 A. Yeah. 21 Q. So is there a safety lid? 22 A. As of today? 23 Q. Yes. 24 A. Well, there's -- the holes are 25 structured in a certain way that getting a large</p>

<p style="text-align: right;">Page 110</p> <p>1 amount tipped on your face shouldn't happen. The 2 holes are certain tiny size and you have to turn it. 3 Q. All there is the twisty we're all 4 familiar with? 5 A. Yeah, yeah. 6 Q. Let's skip ahead to 1976. That one 7 was 1966. If you'll turn to March 22, 1976, it 8 might be in Binder 2. Here you go. 9 MR. PANATIER: Your Honor, I have the 10 bad news of delivering you another binder. 11 Q. Dr. Hopkins, let me just find this 12 one for you. 13 Dr. Hopkins, this is a document that you and 14 I have gone over before, true? 15 A. Yes. 16 Q. Okay. That is dated March 22, 1976 17 and it's a memo from Bruce Semple, Medical Director. 18 And it is to D.R. Petterson or Petterson, yeah, 19 medical director of, correct, baby products? 20 A. Yeah. 21 Q. And it is about a phone dialogue with 22 someone at NIOSH, correct? 23 A. Yes. 24 Q. NIOSH is the National Institute for 25 Occupational Safety and Health, true?</p>	<p style="text-align: right;">Page 112</p> <p>1 A. Yes. 2 Q. Okay. Let's skip down here. "She 3 then asked him about asbestos and he said that this 4 was a different problem and that he would not 5 recommend using talc on babies because of the 6 possibility of asbestos inhalation regardless of the 7 contamination level. He felt that this would 8 constitute an unnecessary risk." 9 MS. SULLIVAN: Can I just ask in the 10 interest of completeness, your Honor, that Counsel 11 read the next two lines as well. 12 Q. "He seemed quite surprised when I 13 informed him that there was no asbestos in JBP and 14 that Langer himself agreed. We then discussed the 15 safety of pure talc and he affirmed that at the 16 cosmetic use exposure levels he did not believe that 17 there would be a safety problem." Did I read that 18 right? 19 A. You did, yes. 20 Q. Now, we're going to get to Dr. 21 Langer. And Dr. Langer -- are you here to say that 22 Dr. Langer retracted his results about asbestos in 23 Johnson's Baby Powder, or have you changed that 24 opinion? 25 A. Dr. Langer published a paper with his</p>
<p style="text-align: right;">Page 111</p> <p>1 A. Yes. 2 MR. PANATIER: Your Honor, at this 3 time, we offer this into evidence 2594. 4 MS. SULLIVAN: No objection. 5 THE COURT: So admitted. 6 (Plaintiff's Exhibit 2594 was moved 7 into evidence.) 8 Q. So this phone call they had was with 9 D.H. Groth, Doctor -- chief of the pathology 10 section, correct? 11 A. Yes. 12 Q. And to get our bearings, the J&amp;J 13 person, this was Bruce Semple, says, "I identified 14 myself and the reason for phoning. He was pleasant 15 and cooperative. He recalled being phoned around 16 Wednesday, March 17th, '76 by a woman who he thought 17 was a Cincinnati newspaper. She said that she had 18 called Dr. Arthur Langer to inquire about nickel in 19 talk. He used the Christian name Tom for Langer and 20 first and then corrected it in the manner that would 21 lead one to suspect that he does not know Langer. 22 Langer had referred her to Groth as an expert in 23 trace medical toxicology. So we're talking about a 24 phone call that this reporter had with brother at 25 NIOSH, right?</p>	<p style="text-align: right;">Page 113</p> <p>1 colleague Dr. Rolle in 1976 where he gave the 2 results of his studies on Johnson's powder and many 3 other powders. 4 Q. We'll discuss that. 5 Bottom line is Dr. Groth, NIOSH, 1976 says, 6 talcum powder shouldn't be used on babies, right? 7 A. That's what he said based on his 8 misunderstanding. 9 Q. "Based on his misunderstanding"? 10 A. Yeah, because he thought mistakenly 11 that the possibility of asbestos inhalation. 12 (There is a discussion off the 13 record.) 14 THE COURT: Let's go off the record. 15 (Recess taken 11:38 to 11:40 p.m.) 16 THE COURT: Let's go back on the 17 record. 18 Whenever you're ready to continue. 19 MR. PANATIER: Sure. 20 BY MR. PANATIER: 21 Q. Doctor, you're aware that Dr. Langer 22 tested Johnson's Baby Powder a number of times, 23 right? 24 A. Yes. 25 Q. And you're saying that in 1976 he</p>

<p style="text-align: right;">Page 114</p> <p>1 published a paper where he did not report Johnson -- 2 asbestos in Johnson &amp; Johnson's, true? 3 A. Yes, his peer reviewed scientific 4 publication with Dr. Rolle did not report asbestos 5 in baby powder. 6 Q. You know that earlier he actually 7 brought Johnson &amp; Johnson to his offices in Mount 8 Sinai and showed him the asbestos in earlier 9 samples, correct? 10 A. Well, what I'm saying is when he did 11 his earlier experiments, he mistakenly claimed to 12 have found asbestos. When he learned how to do his 13 test methods properly, he did not find it and that 14 was the data he published. 15 Q. So you're saying that he retracted 16 his results? 17 A. I'm not using the word retraction. 18 You're putting words there. 19 What I'm saying is that when he published 20 his final publication in a peer reviewed scientific 21 journal, he did not claim to have found asbestos in 22 Johnson's Baby Powder. 23 Q. You know that those were two 24 different samples, two bottles, different samples, 25 than what he tested in '71, correct?</p>	<p style="text-align: right;">Page 116</p> <p>1 (Sidebar.) 2 MS. SULLIVAN: Your Honor, this is 3 the Reuters article from last year. It's written by 4 both -- the New York Times were speaking to the 5 Plaintiffs' lawyers. It has a picture of Martin 6 Lear (phonetic) attached to it. It is -- he's going 7 to ask about hearsay. It's not an ancient document. 8 He's going to ask what was said (INAUDIBLE) -- 9 what's in the article. It is completely improper 10 and I believe it's inadmissible (INAUDIBLE). 11 MR. PANATIER: Your Honor, if I can, 12 first of all, this isn't Reuters. This is the New 13 York Times. 14 Second of all, Dr. Langer -- Dr. 15 Hopkins just quoted saying Dr. Langer in the New 16 York Times was quoted as saying that he was 17 mistaken. The quote that I'm interested right 18 here -- I'm not going to show pictures of Mark 19 Lear -- is right here. 20 THE COURT: "In a recent interview, 21 Mr. Langer told the Times that Dr. Chalmers only 22 spoke for himself and for the institution, not our 23 research group. He reiterated that his team had 24 detected asbestos in Johnson's Baby Powder. I stand 25 by that today absolutely."</p>
<p style="text-align: right;">Page 115</p> <p>1 A. What he tested in '71 was when he was 2 developing his methodologies, by the time he had 3 learned how to do his technique correctly. He was 4 not finding asbestos in -- not only Johnson's 5 powders, but others he was looking at. 6 Q. Is it your testimony that Dr. Langer 7 maintained that he did not find asbestos then in 8 Johnson's Baby Powders? 9 A. He wrote to -- an article to the, I 10 think, it was the New York Times where he claimed he 11 was mistaken and he did not find it. 12 Q. If you can turn please, sir, to the 13 tab December 12, 2018. It should be in the thin 14 binder. Hold on. I'll find it. 15 Okay. Yep. Here it is, right here. It's 16 that tab right there. 17 And I just want you to turn to the page 18 marked 6-10. See at the bottom, bottom right, they 19 say page number, out of ten? 20 A. Yes, yes, I have that. 21 Q. Go to 6 of 10. 22 A. Yes. 23 MS. SULLIVAN: Your Honor, can we 24 have a sidebar on this? 25 THE COURT: Yeah, sure.</p>	<p style="text-align: right;">Page 117</p> <p>1 MR. PANATIER: That's all. 2 MS. SULLIVAN: That's hearsay, your 3 Honor. There's no exception. It's 2018. 4 THE COURT: Well -- right. The 5 witness testified with regard to the New York Times 6 article referring to a letter to the editor -- 7 MS. SULLIVAN: It's during the '70s. 8 THE COURT: -- that the Jury has 9 already seen. 10 MR. PANATIER: That's correct. 11 THE COURT: The same could be made by 12 the Court, admitted by the Court. And based upon 13 his response, the Court will allow only this portion 14 of it to be shown. 15 MR. PANATIER: So we'll offer it 16 subject to redaction. 17 THE COURT: Yes. 18 MS. SULLIVAN: And, your Honor, this 19 is not -- the prior argument is to hearsay 20 statements, such as ancient document and statement 21 against interest. This meets neither. 22 MR. PANATIER: This is to impeach the 23 witness's statement. 24 THE COURT: I'll allow it for 25 impeachment purposes only. Thank you.</p>

<p style="text-align: right;">Page 118</p> <p>1 (Sidebar ends.)</p> <p>2 BY MR. PANATIER:</p> <p>3 Q. Have you found Page 6 of 10, sir?</p> <p>4 THE COURT: Sir, subject to the</p> <p>5 Court's ruling, this document, portions of it, are</p> <p>6 now admitted into evidence.</p> <p>7 (Plaintiff's Exhibit 3162 was moved</p> <p>8 into evidence.)</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. PANATIER:</p> <p>11 Q. Okay. And just for purposes of</p> <p>12 understanding what we're looking at, this is a New</p> <p>13 York Times article --</p> <p>14 THE COURT: I'm sorry. What was the</p> <p>15 marking of this? I apologize.</p> <p>16 MR. PANATIER: This one is 3162, your</p> <p>17 Honor.</p> <p>18 THE COURT: Thank you.</p> <p>19 BY MR. PANATIER:</p> <p>20 Q. This is a New York Times article from</p> <p>21 December of 2018, right, if you look at the front</p> <p>22 page?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And let's go here to Page 6 of</p> <p>25 10. You see where it says, "In a recent interview,</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. It just says "1959" on it. So just</p> <p>2 the tab should just say -- there you go, right</p> <p>3 there. Well, that's my fault. You don't have one.</p> <p>4 Here, I'm going to let you look at it briefly and</p> <p>5 then we'll --</p> <p>6 THE COURT: I'll give the witness</p> <p>7 mine.</p> <p>8 MR. PANATIER: Okay. Thank you, your</p> <p>9 Honor. I'm sorry, sometimes they don't get copied</p> <p>10 over.</p> <p>11 THE COURT: That's alright.</p> <p>12 Here you go, Dr. Hopkins.</p> <p>13 THE WITNESS: Thank you, your Honor.</p> <p>14 BY MR. PANATIER:</p> <p>15 Q. Thank you.</p> <p>16 Alright. Dr. Hopkins, I'm sorry for that.</p> <p>17 This is a February 17, 1959 memo that you</p> <p>18 and I have gone over before, correct?</p> <p>19 A. Yes.</p> <p>20 Q. It's about a trip that Johnson &amp;</p> <p>21 Johnson took to Italy to the mine where they got the</p> <p>22 Italian talc, right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 MR. PANATIER: Your Honor, at this</p>
<p style="text-align: right;">Page 119</p> <p>1 Mr. Langer told the times that Dr. Chalmers spoke</p> <p>2 for himself and for the institution not our research</p> <p>3 group. He reiterated that his team had detected</p> <p>4 asbestos in Johnson's Baby Powder. I stand by that</p> <p>5 today absolutely, he said." Do you see that?</p> <p>6 A. I see what is written in that</p> <p>7 discussion with the New York Times.</p> <p>8 Q. Do you accept that Mr. Langer gave</p> <p>9 this interview to the New York Times and he stated</p> <p>10 that?</p> <p>11 A. Look, I said you read what was</p> <p>12 written in an interview with the New York Times.</p> <p>13 Q. And what Dr. Langer said was that</p> <p>14 they had found asbestos in the baby powder and that</p> <p>15 he stands by it today, right?</p> <p>16 A. That's what he said.</p> <p>17 Q. Okay.</p> <p>18 A. Yes.</p> <p>19 Q. If you'll turn to the document marked</p> <p>20 1959. It's in the big fat one right towards the</p> <p>21 front. It just says "1959" on it. So it should be</p> <p>22 fairly early. Here, let me help you.</p> <p>23 A. I've got it. No worry.</p> <p>24 Q. That's not it.</p> <p>25 A. That's not it.</p>	<p style="text-align: right;">Page 121</p> <p>1 time we offer Plaintiff's Exhibit 2345 into</p> <p>2 evidence.</p> <p>3 MS. SULLIVAN: No objection.</p> <p>4 THE COURT: So admitted.</p> <p>5 (Plaintiff's Exhibit 2345 was moved</p> <p>6 into evidence.)</p> <p>7 Q. Okay. So here we go. This is the</p> <p>8 memo and it says, "Important persons interviewed</p> <p>9 titles and organizations represented: Nick Massey,</p> <p>10 Johnson &amp; Johnson; Dr. Stefano, MD, son-in-law of</p> <p>11 Charles Matthew, Matthew &amp; Company is sole North</p> <p>12 American agent for Balcizone."</p> <p>13 So Charles Matthew isn't a person, at least,</p> <p>14 here, it's a company, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And they imported the Italian talc</p> <p>17 that Johnson &amp; Johnson was using in the US, true?</p> <p>18 A. Yes.</p> <p>19 Q. Now, we're going to talk about Dr.</p> <p>20 Stefano later, so I want to make sure we know who he</p> <p>21 is.</p> <p>22 He's the son-in-law of the owner of</p> <p>23 Charles Matthew, correct?</p> <p>24 A. That's what it says.</p> <p>25 Q. His wife is the chief stockholder in</p>

<p style="text-align: right;">Page 122</p> <p>1 the company, true?</p> <p>2 A. That's what it says.</p> <p>3 Q. Okay. Now, we're going to talk about</p> <p>4 some of these studies, these Battelle studies. So I</p> <p>5 want to get our bearings on what was being looked</p> <p>6 at.</p> <p>7 So, if you go to synopsis, it says, "The</p> <p>8 owners, mills and high grade mine of the Society</p> <p>9 Talco Val Chisone were visited. It was learned that</p> <p>10 all of the high grade talc comes from one mine with</p> <p>11 rare exception. It was also learned that Grade 2 is</p> <p>12 the same of run of mine and that Grade 1 is not a</p> <p>13 specifically hand selected product."</p> <p>14 So Grade 1 and 2 are both coming from --</p> <p>15 MS. SULLIVAN: It's not</p> <p>16 "specifically."</p> <p>17 Q. "It's not especially a hand selected</p> <p>18 product."</p> <p>19 MR. PANATIER: Thank you.</p> <p>20 Q. Correct?</p> <p>21 A. That's what's written, yes.</p> <p>22 Q. And they're coming from the same</p> <p>23 mine, correct?</p> <p>24 A. One is run of mine, which means it's</p> <p>25 kind of the end of the day stuff that's coming off</p>	<p style="text-align: right;">Page 124</p> <p>1 A. Yes.</p> <p>2 Q. (Continuing.) "Explained that our</p> <p>3 problem was not a matter of dissatisfaction but that</p> <p>4 about one-third of the doctors are presently</p> <p>5 advising against the use of baby talc in as much</p> <p>6 starches and oils have a greater purity and there is</p> <p>7 no dangerous dust to inhale." Now, let's stop</p> <p>8 there.</p> <p>9 We have now this is 1959. They're reporting</p> <p>10 that one-third of doctors are recommending against</p> <p>11 baby talc, true?</p> <p>12 A. Well, that's what's written.</p> <p>13 Q. Well, that's what the Johnson &amp;</p> <p>14 Johnson person said, true?</p> <p>15 A. Yes, that's what's written, yes.</p> <p>16 Q. Okay. We saw that again in 1966,</p> <p>17 seven years after this, right?</p> <p>18 A. Well, we saw that three -- two</p> <p>19 doctors had written into the American Baby Journal</p> <p>20 not to use talc, yes.</p> <p>21 Q. I'm just asking if we saw that in</p> <p>22 '66?</p> <p>23 A. We did, yes.</p> <p>24 Q. And we saw it again in 1976 with</p> <p>25 NIOSH, true?</p>
<p style="text-align: right;">Page 123</p> <p>1 that's supposedly the premium. "Run of mine" is a</p> <p>2 manufacturing term.</p> <p>3 Q. Okay.</p> <p>4 A. They're different.</p> <p>5 Q. They're both coming out of the same</p> <p>6 mine?</p> <p>7 A. Yes.</p> <p>8 Q. Go ahead and turn the page, if you</p> <p>9 will, sir.</p> <p>10 It says, "The Val Chisone company</p> <p>11 brings in millions of dollars per year, much of</p> <p>12 which goes to the personal fortunes of the</p> <p>13 stockholders."</p> <p>14 And is it, in Italian, do you know if it's</p> <p>15 villa or villa?</p> <p>16 A. Villa.</p> <p>17 Q. "The Villa family is very wealthy and</p> <p>18 holds a unique position in the modern world. It</p> <p>19 controls the Germanasca Valley in an almost futile</p> <p>20 sense. The Val Chisone miners were worried lest we</p> <p>21 had found poisonous minerals in the talc or had</p> <p>22 otherwise been displeased. When told we merely had</p> <p>23 a scheme for improving their excellent talc, they</p> <p>24 were most anxious to cooperate."</p> <p>25 "Massey" -- now he's with J&amp;J, right?</p>	<p style="text-align: right;">Page 125</p> <p>1 A. You need to refresh my mind on that.</p> <p>2 Q. That was the growth conversation.</p> <p>3 A. The growth, yeah -- well, he then --</p> <p>4 I did a little more in that paragraph where you had</p> <p>5 not yellow highlighted where he explained that he</p> <p>6 was not so concerned and you read that out to me.</p> <p>7 Q. And then we established what Langer</p> <p>8 still maintains, correct?</p> <p>9 A. You established what he wrote or</p> <p>10 spoke in an interview to the New York Times,</p> <p>11 correct.</p> <p>12 Q. "Massey explained that J&amp;J has no</p> <p>13 desire to get into the mining business." And that</p> <p>14 was true for another five years, right?</p> <p>15 A. Yes, yes.</p> <p>16 Q. Because they did get into the mining</p> <p>17 business, right?</p> <p>18 A. Yes.</p> <p>19 Q. "Its objective is to produce a</p> <p>20 superior powder to reverse the present market trend,</p> <p>21 which is away from talc," right?</p> <p>22 A. Yes.</p> <p>23 Q. So they wanted to strengthen the</p> <p>24 position of talc in the market, true?</p> <p>25 A. Well, you can only comment on what it</p>

<p style="text-align: right;">Page 126</p> <p>1 says. The objective is to produce a superior 2 powder. 3 Q. Okay. If you will, sir, turn to 4 Page 4. It's at the top. And they discuss this 5 whole run of mine and all of this. "When the whole 6 run of mine ore both chunks and fine is ground, it 7 is designated Grade 2. Grade 2, therefore, is the 8 same as run of mine. When primarily coarse chunks 9 are grounded, it's designated Grade 1. The logic in 10 the operation appears to be that whereas the coarse 11 contaminants have been removed at the picking shed 12 at the mine, the contaminants which are in the fine 13 particles are necessarily overlooked. Hence, 14 milling primarily coarse run of mine ore produces a 15 slightly purer product Grade 1 than does the milling 16 of the whole run of mine ore both chunks and fines 17 Grade 2." 18 Okay. So we've got Grade 1, Grade 2? 19 A. Yes. 20 Q. Let's look at some test results. 21 This one will be in the big binder May 23, 1958. 22 MR. PANATIER: Your Honor, this is 23 Exhibit 2344. It's already in evidence. 24 THE COURT: What was the date of? 25 MR. PANATIER: This one is May 23,</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. So let's see what they found in this. 2 And can you just look up here. This is Table 1. 3 A. Yeah. 4 Q. Do you see here, sir, where they look 5 in the Italian No. 2 and No. 1 and they find 6 anywhere from 1 to less than 1 percent to trace 7 tremolite? 8 A. Tremolite, yes. 9 Q. Right, the mineral, correct? 10 A. The mineral tremolite, yes. 11 Q. Yes. And, of course, there are many 12 many many minerals, accessory minerals associated 13 with talc, correct? 14 A. Yes, in the mine you get carbonates, 15 chalk. 16 Q. Yes. 17 A. Yeah, magnesium carbonate, calcium 18 carbonate. 19 Q. There's dozens of accessory minerals 20 that are present often in the talc, correct? 21 A. Not sure about "dozens." But, 22 certainly, probably into double figures you can 23 get -- 24 Q. Okay, double figures. 25 A. -- different minerals, yes. It</p>
<p style="text-align: right;">Page 127</p> <p>1 1958. 2 BY MR. PANATIER: 3 Q. You found that, sir? 4 A. Uh-huh, yes. 5 Q. Alright. This is a Battelle report, 6 right? What it looks like they're doing -- they're 7 studying the talc ores, right? 8 A. Yeah, it's a study on floatation. 9 Q. Right. "Floatation" is the process 10 that Johnson &amp; Johnson was using only on the baby 11 powder, not on its industrial products, correct? 12 A. Yes. 13 Q. Okay. You can see here they say, 14 "Italian No. 2 talc likewise responded favorably to 15 floatation. The two methods were developed which 16 yielded products that contained 96 to 97 percent 17 platy talc and 2 to 3 percent fibrous talc. 18 Mineralogically, these products are superior to the 19 Italian No. 1 talc, which is being used by J&amp;J for 20 baby powder," correct? 21 A. Yes. 22 Q. So floating the No. 2 they've got 23 something that was better than what J&amp;J was already 24 using, right? 25 A. Better than non-floated, yes, yes.</p>	<p style="text-align: right;">Page 129</p> <p>1 depends on the mine. 2 Q. The three -- well, it looks like 3 three are picked out by the talc to focus on. The 4 talc, the carbonates and tremolite, right? 5 A. Yes. 6 Q. Now, they didn't include all the 7 other potential accessory minerals, right, they only 8 focused on these three, true? 9 A. Well, if you add up 48, 43, 5 and 4 10 that's pretty well everything. 11 Q. Let me ask you this. 12 Was the finding of tremolite something that 13 was good news to Johnson &amp; Johnson? 14 A. It wasn't bad news cause the other 15 studies had shown that the tremolite was the 16 harmless block form, the rod form. 17 Q. This should have been rejected, 18 right, because there was amphibole, right? 19 A. Not necessarily. Because back in -- 20 even as far back as the late 1940s, the company was 21 using optical microscopy methods to look at the 22 talc. It wasn't just X-ray diffraction. In fact, 23 I'm not even sure X-ray diffraction was being used 24 much at that time. The results, of course -- 25 MR. PANATIER: I'm going to object as</p>

<p style="text-align: right;">Page 130</p> <p>1 nonresponsive, your Honor, move to strike.  2 MS. SULLIVAN: Your Honor, he's  3 answering the question.  4 THE COURT: Objection overruled.  5 BY MR. PANATIER:  6 Q. Page 4, Table 2. They find more  7 tremolite, right, in Italian 2 and Italian 1,  8 correct?  9 A. Oh, I got the wrong page. What page  10 is this?  11 Q. Page 4.  12 A. Yes.  13 Q. Okay. I'm just going to go through  14 this. You probably -- you can just look at the page  15 up here, if it will be quicker for you.  16 Page 7, Table 5, they find more tremolite in  17 the Italian No. 11 and Italian No. 2, right?  18 A. Yes.  19 Q. That's -- the Italian 1 is the stuff  20 they are then using, right?  21 A. Yes.  22 Q. We know from the visit to the mine  23 that both Italian 1 and Italian 2 are coming from  24 the same source ore, correct?  25 A. From the Fontana mine, yes.</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. Alright, sir. We're just going to  2 look at this one briefly. This is from 1958,  3 May 9th. And it says that, "In the grit from this  4 talc," they say, "it occurs as aggregates of talc  5 and contaminants as acicular" -- and "acicular"  6 means needlelike, correct?  7 A. Yes.  8 Q. (Continuing.) "And fibrous particles  9 of talc and amphibole as shards of granules of  10 amphibole or carbonate and titanite, rutile, zircon,  11 apatite and other accessory minerals."  12 Those would be some of those other  13 minerals that sometimes appear in the talc, true?  14 A. Yes.  15 Q. And then down at the bottom it says,  16 "The Italian No. 1 contains from less than 1 percent  17 to about 3 percent of contaminants. The  18 contamination is natural and consists mostly of  19 carbonate with minor amphibole and rare accessory  20 minerals."  21 And down here you can see it says, "The  22 amphibole component has been established to be the  23 variety tremolite," right?  24 A. Yes.  25 Q. And, of course, if you look in the</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. Yes. If you turn to Page 10, four  2 more results with tremolite, correct?  3 A. Yes.  4 Q. If you turn to Page 14, there is  5 another result for tremolite for Italian 1 and  6 Italian 2, true?  7 A. Yes. There is trace of tremolite in  8 Italian talc, yeah.  9 Q. Well, there it's full 2 percent and  10 under 1 percent, correct?  11 A. On floated talc, it's less than one  12 per -- less than one, yes.  13 Q. And then if you turn to the Appendix  14 A1 and A2, they run a bunch of tests on these,  15 right?  16 A. Yes.  17 Q. And they find tremolite numerous  18 times. Can we agree on that?  19 A. They do. They find a mineral called  20 tremolite, yes.  21 Q. Okay. Sir, if you'll turn to  22 May 9th, 1958.  23 MR. PANATIER: This is in evidence,  24 your Honor. This is Exhibit 2343.  25 BY MR. PANATIER:</p>	<p style="text-align: right;">Page 133</p> <p>1 introduction page here, it says, "This is Russell's  2 copy," okay. And I don't think that I have R.S.  3 Russell up here.  4 But who is R. Russell? Who is Robert  5 Russell?  6 A. Bob Russell was a scientist in the  7 research department.  8 Q. Okay. I'm just going to but Russell  9 as a scientist.  10 So it says this is his copy. So he's  11 received this, right?  12 A. Yes.  13 Q. Okay. You can set that aside, sir,  14 or if you're ready to turn to the next page.  15 Let's do July 31st, 1959. This was  16 discussed last week. This one is in evidence and  17 it's 2346.  18 This is, again, another Battelle study from  19 July 31st, 1959, correct?  20 A. Yes.  21 Q. And, again, sir, you're testing the  22 floatation and they're finding tremolite again and  23 again, correct?  24 A. Yeah, you find tremolite, yeah.  25 Q. Okay. You see here they find it and</p>

<p style="text-align: right;">Page 134</p> <p>1 they note that it's largely fine acicular particles.  2 "Acicular" means needlelike, right?  3 A. Well, it's like the old Greek word,  4 yeah, I mean, it's like the shape of my pen.  5 Q. Okay. If you go to Page 32, although  6 you can just look up here.  7 There's many more results finding tremolite  8 over and over and over again, correct?  9 A. You will find trace of tremolite in  10 Italian talc.  11 Q. Johnson &amp; Johnson absolutely knew  12 that tremolite was a consistent mineral that was  13 present in the Italian talc, correct?  14 A. Yes, it's one of several minerals  15 that are present in talc.  16 Q. Right, I mean, we can look through  17 this. We are going to find it more often than not,  18 aren't we?  19 A. You'll find it occasionally, yeah.  20 Q. Okay. Here it is, again, okay.  21 Johnson &amp; Johnson received these tests and knew  22 about them, correct?  23 A. Yes.  24 Q. Let's go to December 31st, 1959.  25 MR. PANATIER: This will be</p>	<p style="text-align: right;">Page 136</p> <p>1 horizontally, that pretty well comes to a hundred.  2 Q. Okay.  3 A. Between platy, non-platy, yeah.  4 That's pretty well everything there. So it doesn't  5 mean you're going to get apatite or rutile or any of  6 the minerals in those particular samples.  7 Q. Next one -- go to -- this says  8 March 8th, 1960. And this one is in evidence as  9 2350.  10 You see this is pilot plant  11 beneficiation of Italian run of mine talc,  12 March 8th, 1960, right?  13 A. Yes.  14 Q. Okay. Let's just go to one of their  15 tables where they do characteristics of talc  16 products. Tremolite, they find it in every single  17 one, right?  18 A. What table is that?  19 Q. This is Table 8.  20 A. Yes, they report tremolite.  21 Q. And, of course, they find it in a  22 Johnson &amp; Johnson shelf product that was a sample  23 from 1958, right?  24 A. August '58, yes.  25 Q. Okay. So we know -- they know by</p>
<p style="text-align: right;">Page 135</p> <p>1 Exhibit 2349. This is already in evidence, your  2 Honor.  3 BY MR. PANATIER:  4 Q. Another Battelle study and I'm almost  5 done with the Battelle studies. You see that,  6 December 31st, '59?  7 A. Yeah.  8 Q. And, again, sir, they found more and  9 more results for tremolite in the ore, correct?  10 A. Yeah, yes, tremolite.  11 Q. If you go to the very last page,  12 again, it's kind of small type. But you can see  13 over and over again -- by the way, when it says,  14 less than one, that's not the same as trace,  15 correct, because when they find trace, they mark  16 trace, true?  17 A. Sometimes they mark trace, yeah. And  18 sometimes they mark less than one.  19 Q. Okay.  20 A. Yeah.  21 Q. And they're not reporting on all  22 those other accessory minerals, the apatite, the  23 titanite, the other ones, they're reporting on  24 tremolite, dolomite and talc?  25 A. They are. But when you add up</p>	<p style="text-align: right;">Page 137</p> <p>1 now, this is 1960, certainly, that even if they  2 beneficiate, they float the talc, that tremolite  3 makes it through that process and even into the  4 final product, right?  5 A. Yes, if they -- yes.  6 Q. Johnson &amp; Johnson knew there was  7 tremolite unequivocally in the source ore and in the  8 final product, correct?  9 A. Tremolite, yes, tremolite.  10 Q. Yes, I understand.  11 A. Yeah.  12 Q. If you will turn, sir, to -- it  13 should just be marked 2,000. So it's probably in  14 that final binder. It should be marked 2,000 and  15 it's in that last binder. Let me know when you have  16 it.  17 A. Yeah, we have it.  18 Q. Can you see, sir -- you know what  19 interrogatories are, right?  20 A. Yes.  21 Q. Interrogatories are questions in a  22 lawsuit where one person asks questions of the other  23 and the other has to answer them under oath, just  24 like you've taken the oath in a courtroom, right?  25 A. Yes.</p>

<p style="text-align: right;">Page 138</p> <p>1 Q. Okay. And these are Johnson &amp; 2 Johnson's answers to interrogatories filed here in 3 Middlesex County, right? 4 A. Yes. 5 Q. Okay. In the Krishinsky case, do you 6 see that? 7 A. Yes. 8 Q. And if you go to the end, go to very 9 end, the last page, you'll see that there's a 10 certification by the person from Johnson &amp; Johnson 11 who answered those interrogatories, Nancy Musco. Do 12 you see that? 13 A. I see that, yes. 14 Q. And this is signed May 23, 2000, 15 right? 16 A. Yes, it is, yeah. 17 Q. That's 40 years give or take after 18 most of the Battelle studies we saw, right? 19 A. Yes. 20 Q. Okay. 21 MR. PANATIER: Your Honor, we offer 22 these into evidence, Exhibit 3173. 23 MS. SULLIVAN: I believe your Honor 24 has already ruled on this. 25 THE COURT: Can I see you at sidebar.</p>	<p style="text-align: right;">Page 140</p> <p>1 tremolite or other contaminants in Johnson's baby 2 powder." 3 And what Johnson &amp; Johnson wrote here in 4 2000 and verified was, "To the best of Defendant's 5 knowledge, talc used in the manufacture of Johnson &amp; 6 Johnson's Baby Powder never contained asbestos in 7 any form or tremolite." Did I read that right? 8 A. You read what was written, yes. 9 Q. And that's sworn answer was false, 10 correct? 11 A. I'm not going to speculate it was 12 intended to be false. It is not correct. 13 Q. Let's parse that out, right. It's 14 false, correct? 15 A. It is not correct. 16 Q. And it was certified -- it was 17 certified by Nancy Musco who is someone that you 18 have actually worked with in this litigation, 19 correct? 20 A. I never actually met Nancy Musco. I 21 think I may have spoken to her once on the phone, 22 but she was -- when I was based here in New Jersey, 23 she was in the same building, but I don't believe I 24 ever actually met her. 25 Q. Have you met with any individuals</p>
<p style="text-align: right;">Page 139</p> <p>1 (Sidebar.) 2 MS. SULLIVAN: Your Honor, we have -- 3 THE COURT: Wait, wait, wait. I 4 didn't hear you. Just get closer. 5 MS. SULLIVAN: Sure. 6 THE COURT: Go ahead. 7 MS. SULLIVAN: We had a continuing 8 objection to the line of lawsuits. But your Honor 9 already ruled on that so... 10 THE COURT: I did. Okay. Thank you. 11 (Sidebar ends.) 12 THE COURT: It's now admitted into 13 evidence. 14 (Plaintiff's Exhibit 3173 was moved 15 into evidence.) 16 MR. PANATIER: Thank you. 17 BY MR. PANATIER: 18 Q. Sir, will you turn to Question 17, 19 please. 20 A. Yes. 21 Q. The question that Johnson &amp; Johnson 22 was asked was, "Describe in detail all processes, 23 procedures and testing performed upon the talc used 24 in the manufacture of Johnson's Baby Powder to 25 reduce or eliminate the existence of asbestos,</p>	<p style="text-align: right;">Page 141</p> <p>1 with Johnson &amp; Johnson to help them prepare for 2 their depositions in this litigation? 3 A. I don't really understand the 4 question. 5 Q. Sure. Did you help prepare any 6 Johnson &amp; Johnson employees or former employees for 7 their depositions? 8 A. I've not been involved in this 9 particular deposition, no. 10 Q. I'm not asking about this case. 11 A. Oh, right. 12 Q. I'm asking for any depositions, have 13 you helped prepare any people whether it be Ms. 14 Musco or Nicholson or anybody else for their 15 depositions? 16 MS. SULLIVAN: Your Honor, sidebar. 17 THE COURT: Sure. 18 Don't answer. 19 (Sidebar.) 20 MS. SULLIVAN: Your Honor, I don't 21 know what the answer is, but he's a consultant for 22 Johnson &amp; Johnson. And if the company had him 23 prepare employees, that's privileged and work 24 product. 25 THE COURT: One person at a time.</p>

<p style="text-align: right;">Page 142</p> <p>1 MS. PLACITELLA: I was at the 2 deposition, your Honor. She testified under oath as 3 I recall that she spoke to Dr. Hopkins and that was 4 part of the basis for being prepared to testify as a 5 corporate representative for Johnson &amp; Johnson in 6 these cases. Dr. Nicholson and Nancy Musco, I 7 believe, said the exact same thing, not only that 8 but they were on the phone going over all the tests 9 and what they meant. 10 MR. MAIMON: By designating this 11 gentleman as the corporate representative, your 12 Honor, they've waived attorney-client privilege. 13 He's no longer -- he's not -- by evoking the rule 14 what -- the Federal equivalent 30(b)(6) to designate 15 him, to educate him and so forth, they've waived any 16 attorney-client privilege with regard to him. 17 MS. SULLIVAN: Not for preparation of 18 other witnesses. 19 MR. PLACITELLA: I, actually, recall 20 Dr. Nicholson -- and I can probably find it -- bring 21 in the notes from her conversation, which were 22 marked at her deposition and she said she actually 23 relied upon them in her testimony. 24 THE COURT: Okay. 25 MR. PANATIER: Right now the question</p>	<p style="text-align: right;">Page 144</p> <p>1 A. Not in this litigation, no. 2 Q. You did not, not this case or any 3 other cases? 4 A. Wait a minute. This litigation -- 5 today, you mean in this particular case we're doing 6 today? 7 Q. Let me back up. I'm trying to make 8 this simple. Let's back up. 9 A. Yeah, I'd appreciate that. 10 Q. Have you ever met and helped prepare 11 Ms. Nicholson or Ms. Musco for their testimony? 12 A. The answer to that question is, yes. 13 Ms. -- Dr. Nicholson I spoke to last year and she 14 asked me a question and I -- or some questions and I 15 explained a little bit of background, yes. 16 Q. Let's read this answer a little bit 17 further. "Defendant sources of talc were selected 18 for their lack of contaminants and further testing 19 was performed over a significant number of years by 20 outside laboratories which verified the talc sources 21 did not contain asbestos or tremolite." 22 Did I read that right? 23 A. Yes, you read what was written. 24 Q. That's entirely wrong, isn't it? 25 A. Yeah, and, you know, I'm not going to</p>
<p style="text-align: right;">Page 143</p> <p>1 is, did you help prepare them. 2 THE COURT: That's not privileged and 3 I'll allow it. Thank you. 4 (Sidebar ends.) 5 (There is a discussion off the 6 record.) 7 THE COURT: You can answer the 8 question, Doctor. 9 THE WITNESS: Would you repeat it? I 10 just want to make sure it's top of mind. 11 BY MR. PANATIER: 12 Q. Did you help in this litigation meet 13 with via in person or on the phone prepare Ms. Musco 14 or Ms. Nicholson for their testimony? 15 A. In this litigation? 16 Q. In this litigation. 17 A. The answer is, no, not in this 18 litigation. 19 THE COURT: No, wait, wait. The 20 witness was pointing to the Answers to 21 Interrogatories. So please be clear with what 22 you're asking. 23 BY MR. PANATIER: 24 Q. This presently, me and you, this 25 litigation?</p>	<p style="text-align: right;">Page 145</p> <p>1 explain or speculate on whether she understood 2 asbestos in tremolite or did it mean asbestos 3 tremolite, yeah. 4 Q. Let's see what she says about how she 5 got these answers. She says, "I'm employed by 6 Johnson &amp; Johnson Consumer Companies, Inc." 7 THE COURT: Where are you reading 8 from, Counsel? 9 MR. PANATIER: The same -- sorry, the 10 interrogatories, your Honor. 11 THE COURT: Thank you. 12 MR. PANATIER: This is the same 13 exhibit. I was reading from before, the 2000 14 Krishinsky Exhibit 3173. 15 BY MR. PANATIER: 16 Q. "The foregoing Answers to 17 Interrogatories were prepared with the assistance 18 and advice of Counsel for JJCI and upon whose advice 19 and information JJCI and I relied." 20 So the lawyers helped her put this together, 21 right? 22 A. They used the word "Counsel," did 23 they? 24 Q. Yes. 25 A. Counsel, that was...</p>

<p style="text-align: right;">Page 146</p> <p>1 Q. That's lawyers, right?</p> <p>2 A. Yes. It says "Counsel," yes.</p> <p>3 Q. Okay. So Ms. Musco with the help of</p> <p>4 the J&amp;J lawyers said that there had never been</p> <p>5 tremolite in Johnson &amp; Johnson's source ore and</p> <p>6 that's false, correct?</p> <p>7 A. No, we know that there is tremolite,</p> <p>8 has been reported in the Italian talc many, many</p> <p>9 times, yes.</p> <p>10 Q. And we know that the extensive</p> <p>11 testing they refer to showed the tremolite to be</p> <p>12 there, right?</p> <p>13 A. Yes, I'm not disputing that.</p> <p>14 Q. And these answers were provided to</p> <p>15 someone who is representing someone with a disease,</p> <p>16 correct?</p> <p>17 A. Well, the interrogatory is what it</p> <p>18 is.</p> <p>19 Q. Right.</p> <p>20 A. It states what it is.</p> <p>21 Q. And you understand that people rely</p> <p>22 upon those statements that are made by the company,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. When they are trying to decide do I</p>	<p style="text-align: right;">Page 148</p> <p>1 go.</p> <p>2 THE COURT: Thank you.</p> <p>3 BY MR. PANATIER:</p> <p>4 Q. Now, some of the tabs you'll see are</p> <p>5 just marked 78, because there's no other date given.</p> <p>6 But this one does have a date. This is one is</p> <p>7 December 4, 1978.</p> <p>8 A. Okay.</p> <p>9 Q. Okay. And do you see, sir, that this</p> <p>10 is a letter from George Lee, the Director of Applied</p> <p>11 Science -- where is he? There he is. Director of</p> <p>12 Applied Research, sorry, December 4th, 1978. And</p> <p>13 he's writing to NIOSH, correct?</p> <p>14 A. Yes. Yes.</p> <p>15 MR. PANATIER: And, your Honor, I'll</p> <p>16 offer this into evidence.</p> <p>17 THE COURT: What's the marking on it?</p> <p>18 MR. PANATIER: 3624, your Honor.</p> <p>19 MS. SULLIVAN: No objection.</p> <p>20 THE COURT: So admitted. Proceed.</p> <p>21 (Plaintiff's Exhibit 3624 was moved</p> <p>22 into evidence.)</p> <p>23 Q. Okay. Doctor, it says, "Dear Dr.</p> <p>24 Rose," who was at NIOSH. "It was a privilege to</p> <p>25 serve as the American Industrial Hygiene Association</p>
<p style="text-align: right;">Page 147</p> <p>1 have a case, they're relying on your answers, you</p> <p>2 know that, right?</p> <p>3 A. Yeah, and she did say or the person</p> <p>4 who wrote it said, no asbestos.</p> <p>5 Q. Right. And no tremolite?</p> <p>6 A. And they said that as well.</p> <p>7 Q. And those -- that verification, that</p> <p>8 is done under oath, correct?</p> <p>9 A. Well, it is what it is. It says what</p> <p>10 it says. It says, no asbestos or tremolite.</p> <p>11 Q. You have answered interrogatories,</p> <p>12 have you not?</p> <p>13 A. Yes.</p> <p>14 Q. And those were under oath, you know</p> <p>15 it's just like being here?</p> <p>16 A. Yes.</p> <p>17 Q. I have good news. I am going to skip</p> <p>18 some Battelle stuff. We've done a lot of that.</p> <p>19 Let's go to December 4, 1978. It</p> <p>20 should be in the -- it may be in the third binder</p> <p>21 that I haven't given you yet.</p> <p>22 MR. PANATIER: Here you go.</p> <p>23 Q. Yeah, here's 78.</p> <p>24 Okay, last binder. Here you go.</p> <p>25 MR. PANATIER: Your Honor, here you</p>	<p style="text-align: right;">Page 149</p> <p>1 reviewer for the working draft of the criteria for a</p> <p>2 recommended standard occupational exposure to talc.</p> <p>3 Please find enclosed my comments and reply to the</p> <p>4 list of questions furnished by NIOSH."</p> <p>5 So NIOSH asked some questions and this</p> <p>6 fellow from Johnson &amp; Johnson answered them,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. Really all I want to talk about is</p> <p>10 the next page. He discusses asbestos. Know the</p> <p>11 terms non-asbestiform and asbestiform, as they have</p> <p>12 been used through the criteria document, are</p> <p>13 technically imprecise and were further confused by</p> <p>14 interchangeable use of terms such as fibrous talc,"</p> <p>15 et cetera, et cetera.</p> <p>16 Here's what I want to get to.</p> <p>17 "If the ultimate purpose is to</p> <p>18 categorize the tac bearing mineral dust according to</p> <p>19 associated health affects, the following grouping</p> <p>20 should be made on the basis of knowledge of their</p> <p>21 compositions: High purity grade of talcs, cosmetic</p> <p>22 and pharmaceutical grades, which do not contain</p> <p>23 detectable asbestos and do not contain detectable</p> <p>24 quartz according to present commercial analytical</p> <p>25 methods," and it has an asterisk, right?</p>

<p style="text-align: right;">Page 150</p> <p>1 A. Uh-huh.</p> <p>2 Q. And then he gives the definition of</p> <p>3 asbestos, correct?</p> <p>4 A. Yes.</p> <p>5 Q. "Asbestos is defined as the finally</p> <p>6 fibrous form of serpentine known as chrysotile and</p> <p>7 five fibrous forms of the amphibole group amosite,</p> <p>8 anthophyllite, crocidolite, tremolite and</p> <p>9 actinolite." Did I read that right?</p> <p>10 A. You did, yes.</p> <p>11 Q. Okay. And so the definition of</p> <p>12 asbestos that Johnson &amp; Johnson gives to NIOSH</p> <p>13 doesn't say anything about how it grew in the</p> <p>14 ground, just that it is fibrous, correct?</p> <p>15 A. It talks about the fibrous form means</p> <p>16 it's asbestos.</p> <p>17 Q. Right, if it's fibrous, true?</p> <p>18 A. As opposed to the broad form.</p> <p>19 Q. Yes. Right, it says if it's fibrous,</p> <p>20 it's asbestos, right?</p> <p>21 A. That's what that definition says,</p> <p>22 yes.</p> <p>23 Q. Okay. So that's Exhibit 3624. Now,</p> <p>24 let's look at -- this is January 10, '94, yeah.</p> <p>25 MR. PANATIER: This is already in</p>	<p style="text-align: right;">Page 152</p> <p>1 baby powder, right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. They define asbestos again</p> <p>4 under CTFA J4 and TM7024. So one of those is</p> <p>5 XRD/optical and one of those electro microscope,</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. Right?</p> <p>9 They say, it has to be none detected, true?</p> <p>10 A. Yes.</p> <p>11 Q. And then they define it, "Asbestos is</p> <p>12 defined to be the fibrous serpentine chrysotile and</p> <p>13 the fibrous forms of the amphibole group as</p> <p>14 represented by amosite, anthophyllite, crocidolite,</p> <p>15 tremolite and actinolite," right?</p> <p>16 A. Yes.</p> <p>17 Q. They don't say anything about having</p> <p>18 a geologist tell you how it grew in the ground, do</p> <p>19 they?</p> <p>20 A. No, they describe whether it's</p> <p>21 fibrous or not fibrous.</p> <p>22 Q. So I took those two documents and I</p> <p>23 made us a poster, because we're going to start</p> <p>24 looking through some documents probably at the</p> <p>25 break -- after the break and we're going to compare</p>
<p style="text-align: right;">Page 151</p> <p>1 evidence, your Honor. This is Exhibit 2729.</p> <p>2 BY MR. PANATIER:</p> <p>3 Q. And, sir, I'll just show you this</p> <p>4 one. It will be a little quicker, because it's</p> <p>5 already in evidence.</p> <p>6 January 10, '94, do you see that? You can</p> <p>7 look on the screen if it's easier or struggle to</p> <p>8 find the right binder.</p> <p>9 A. It's a different binder.</p> <p>10 Q. Yes.</p> <p>11 A. Okay.</p> <p>12 Q. You see this where it says, "Summary</p> <p>13 of raw material and finished product testing for</p> <p>14 baby powder talc," right?</p> <p>15 A. Yes.</p> <p>16 Q. So this is the testing protocol, what</p> <p>17 they do for the different things they're testing for</p> <p>18 as of '94, right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And we're going to turn to</p> <p>21 this page. And you can see this is the</p> <p>22 specification -- at this time Cyprus owned the mine</p> <p>23 that Johnson &amp; Johnson used to own, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And, by the way, Windsor 66, that's</p>	<p style="text-align: right;">Page 153</p> <p>1 what those documents say to the definitions that</p> <p>2 Johnson &amp; Johnson has provided, okay? Do you see</p> <p>3 those?</p> <p>4 A. Yes.</p> <p>5 Q. Can you read them okay?</p> <p>6 A. Well, let me get my driving glasses.</p> <p>7 Q. Because I want to double-check with</p> <p>8 you that these are what we just looked at before we</p> <p>9 go into a series of documents.</p> <p>10 Are those quotations accurate from what we</p> <p>11 just looked at?</p> <p>12 A. Those are from two documents, yes.</p> <p>13 One is the specification and the other is a</p> <p>14 memorandum written by an employee to NIOSH.</p> <p>15 Q. To NIOSH. The one we looked at just</p> <p>16 before this, true?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So Johnson &amp; Johnson</p> <p>19 internally has defined asbestos as the fibers of any</p> <p>20 of these minerals, chrysotile, amosite,</p> <p>21 anthophyllite, crocidolite, tremolite or actinolite,</p> <p>22 correct, sir?</p> <p>23 A. No. The fibrous form, not "fibers,"</p> <p>24 fibrous form need to be -- that's what you've</p> <p>25 written on the yellow highlight, "fibrous form."</p>

<p style="text-align: right;">Page 154</p> <p>1 Q. Is a fiber fibrous, sir?</p> <p>2 A. It may or may not be. It depends on</p> <p>3 the -- on the -- how the microscopist is defining</p> <p>4 it. So, for constancy, we should use the word</p> <p>5 fibrous. There's a definition for fibrous.</p> <p>6 Q. Well, let me just ask you.</p> <p>7 Is a fiber fibrous?</p> <p>8 A. It can be. But it may not be.</p> <p>9 Q. So you can have a fiber that is</p> <p>10 fibrous and a fiber that's not fibrous?</p> <p>11 A. Yes. And that's -- you have to talk</p> <p>12 to geologist and microscopist to explain the fibrous</p> <p>13 form of those minerals is the asbestos form.</p> <p>14 Q. Okay. Hold on. Let's see how --</p> <p>15 let's see how Johnson &amp; Johnson defines fiber then,</p> <p>16 one second, and then we'll take a break.</p> <p>17 This will be 1995, sir.</p> <p>18 (There is a discussion off the</p> <p>19 record.)</p> <p>20 Q. Have you found it?</p> <p>21 A. I'm sorry, what is the year?</p> <p>22 Q. 1995.</p> <p>23 A. I thought you were going to put it on</p> <p>24 the screen.</p> <p>25 Q. Yep. It just says 1995 on it because</p>	<p style="text-align: right;">Page 156</p> <p>1 their documents is a particle with parallel sides</p> <p>2 and an aspect ratio greater or equal to three times</p> <p>3 as long as it is wide, right?</p> <p>4 A. Well, that's a definition.</p> <p>5 Q. That is "the" definition that they've</p> <p>6 given in their very method --</p> <p>7 A. That is a definition in that</p> <p>8 particular methodology.</p> <p>9 Q. This was always their definition in</p> <p>10 7024, correct?</p> <p>11 A. Yes.</p> <p>12 Q. In fact, it's the definition today,</p> <p>13 isn't it?</p> <p>14 A. That is the same test effort today,</p> <p>15 yes.</p> <p>16 Q. And that is an individual fiber that</p> <p>17 is being described, correct?</p> <p>18 A. It is, yes.</p> <p>19 Q. Okay.</p> <p>20 MR. PANATIER: Your Honor, this is</p> <p>21 probably a good time to break.</p> <p>22 THE COURT: Okay. Members of the</p> <p>23 Jury, we're going to take the lunch break now.</p> <p>24 Please be ready to come back upstairs at 1:30.</p> <p>25 Remember to wear your juror badges where they are</p>
<p style="text-align: right;">Page 155</p> <p>1 that's the only date that's on the document.</p> <p>2 (There is a discussion off the</p> <p>3 record.)</p> <p>4 Q. Okay. This is in evidence already as</p> <p>5 Plaintiff's Exhibit 2736. And I'll just show it to</p> <p>6 you since it's already in evidence.</p> <p>7 A. Okay. I was to have found it</p> <p>8 otherwise.</p> <p>9 Q. This here is Johnson &amp; Johnson's</p> <p>10 TM7024, correct?</p> <p>11 A. Yes.</p> <p>12 Q. This is the test method that Johnson</p> <p>13 &amp; Johnson had for electron microscopy, the testing</p> <p>14 of powder talc, right?</p> <p>15 A. Yes.</p> <p>16 Q. For asbestiform minerals, true?</p> <p>17 A. Yes.</p> <p>18 Q. If we go to how they define it,</p> <p>19 definition of a fiber, "any elongated particle with</p> <p>20 parallel sides and an aspect ratio greater than or</p> <p>21 equal 3-to-1," right?</p> <p>22 A. The definition may vary with needs of</p> <p>23 the client, yes.</p> <p>24 Q. Right. So the only definition of</p> <p>25 fiber that Johnson &amp; Johnson has given us using</p>	<p style="text-align: right;">Page 157</p> <p>1 visible.</p> <p>2 No discussions with regard to this case,</p> <p>3 including the testimony you just heard. No research</p> <p>4 of any kind whatsoever.</p> <p>5 Enjoy your lunch. You can please</p> <p>6 leave your notebooks here. At 1:30 be ready to come</p> <p>7 back upstairs.</p> <p>8 (Jury exits.)</p> <p>9 THE COURT: And we're off the record.</p> <p>10 (Lunch recess taken 12:26 p.m. to</p> <p>11 1:28 p.m.)</p> <p>12 (Jury enters.)</p> <p>13 THE COURT: Please be seated. Make</p> <p>14 sure cell phones are turned off. Whenever you are</p> <p>15 ready you may continue.</p> <p>16 MR. PANATIER: Thank you, your Honor.</p> <p>17 Good afternoon, everybody.</p> <p>18 BY MR. PANATIER:</p> <p>19 Q. Okay. Dr. Hopkins, let's come back</p> <p>20 to BabyCenter.com. Do you remember we started to</p> <p>21 talk about that earlier this morning?</p> <p>22 A. Yes.</p> <p>23 Q. And you said that was a website that</p> <p>24 Johnson &amp; Johnson owned, right?</p> <p>25 A. It's a domain name, yes.</p>

<p style="text-align: right;">Page 158</p> <p>1 Q. Is that their only involvement?</p> <p>2 A. As far as I know, they're not</p> <p>3 responsible for the content, the written content.</p> <p>4 Q. Do you recall in October of 2018 when</p> <p>5 I questioned you about Baby Center and we went over</p> <p>6 a Johnson &amp; Johnson press release about trying to</p> <p>7 reach millennial moms?</p> <p>8 A. Yes.</p> <p>9 Q. And do you recall in that press</p> <p>10 release where Johnson &amp; Johnson said we're going to</p> <p>11 use Baby Center as the engine to get our word out?</p> <p>12 Do you recall that?</p> <p>13 A. I do, yes.</p> <p>14 Q. Okay. Let me know if you need to see</p> <p>15 it. But what we went over was someone named at</p> <p>16 Alison Lewis at J&amp;J had said digital -- let's see.</p> <p>17 "Digital marketing and communications will play an</p> <p>18 important role in the relaunch and the company will</p> <p>19 use its Baby Center On-line Parenting Community as</p> <p>20 the engine. Alison Lewis, the Global Chief</p> <p>21 Marketing Officer at J&amp;J told analysts earlier this</p> <p>22 month."</p> <p>23 Do you recall that?</p> <p>24 A. Yes. They use the on-line community,</p> <p>25 yes.</p>	<p style="text-align: right;">Page 160</p> <p>1 not sure where the rest of it is.</p> <p>2 MR. PANATIER: It's an excerpt for</p> <p>3 just this purpose.</p> <p>4 THE COURT: Okay. Subject to -- hold</p> <p>5 on. Sidebar.</p> <p>6 MS. SULLIVAN: I'm sorry.</p> <p>7 (Sidebar.)</p> <p>8 THE COURT: Okay. So it's</p> <p>9 incomplete. You say it's an excerpt. What else?</p> <p>10 MS. SULLIVAN: This is -- it's not</p> <p>11 relevant and proper for (INAUDIBLE) on its message</p> <p>12 on its face and it has this little Trump summation</p> <p>13 to baby powder, the financial numbers.</p> <p>14 MR. PANATIER: I'm not going to use</p> <p>15 that. I'm only going to use this page, this page</p> <p>16 about Baby Center. So we'll redact that.</p> <p>17 MS. SULLIVAN: Okay.</p> <p>18 THE COURT: And subject to then the</p> <p>19 entire document unless, of course, there's other</p> <p>20 issues with the rest of it, we'll deal with it at</p> <p>21 sidebar.</p> <p>22 MS. SULLIVAN: No objection. Thank</p> <p>23 you.</p> <p>24 (Sidebar ends.)</p> <p>25 THE COURT: So that's admitted into</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. It's Baby Center as the engine,</p> <p>2 correct?</p> <p>3 A. Read that again, because it's</p> <p>4 important. They talk about the on-line community.</p> <p>5 Q. Sure. "Digital marketing and</p> <p>6 communications will play an important role in the</p> <p>7 relaunch and the company will use its Baby Center</p> <p>8 On-Line Parenting Community as the engine. Alison</p> <p>9 Lewis the Global Chief Marketing Officer at J&amp;J</p> <p>10 consumer told analysts earlier this month."</p> <p>11 Is that what you wanted to hear again?</p> <p>12 A. Yes, the on-line community, yes, yes.</p> <p>13 Q. Okay.</p> <p>14 (There is a discussion off the</p> <p>15 record.)</p> <p>16 MR. PANATIER: This will be 3695-23.</p> <p>17 Q. Do you see that this is a Power Point</p> <p>18 entitled "Leadership and Insight" dated 2007 Johnson</p> <p>19 &amp; Johnson Baby GBU?</p> <p>20 A. Yes.</p> <p>21 MR. PANATIER: Okay. And, your</p> <p>22 Honor, at this time we offer this exhibit into</p> <p>23 evidence.</p> <p>24 MS. SULLIVAN: Your Honor, it looks</p> <p>25 like it stops at Page 4 and goes to Page 31. So I'm</p>	<p style="text-align: right;">Page 161</p> <p>1 evidence subject to the Court's specific ruling.</p> <p>2 MR. PANATIER: Thank you, your Honor.</p> <p>3 (Plaintiff's Exhibit 3695-23 was</p> <p>4 moved into evidence.)</p> <p>5 BY MR. PANATIER:</p> <p>6 Q. Alright. So here's our Power Point</p> <p>7 and you see here this would be on the page marked 31</p> <p>8 which is the last page, "Johnson's CRM efforts." Do</p> <p>9 you know what "CRM" means?</p> <p>10 A. No, sorry, no.</p> <p>11 Q. I didn't either until I saw right</p> <p>12 down here; customer relationship marketing, right?</p> <p>13 A. Well, there you go then.</p> <p>14 Q. Right? You see here where it says,</p> <p>15 "Johnson CRM efforts." And the first one is</p> <p>16 reaching 90 percent of mommies through Baby Center.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And do you see where they say they</p> <p>20 own BabyCenter.com?</p> <p>21 A. That's what they said, they own --</p> <p>22 yeah, that's a website name, BabyCenter.com.</p> <p>23 Q. Right. They run their consumer</p> <p>24 customer relationship marketing through Baby Center</p> <p>25 as well as other on-line places, correct?</p>

<p style="text-align: right;">Page 162</p> <p>1 A. Yes, they say -- they say they sent 2 6.7 million e-mails in 2007. 3 Q. The fact that they own 4 BabyCenter.com, the fact that the director of 5 marketing said, we're going to use that as an engine 6 to get out information about our products and this 7 together, sir, can you accept the fact that Johnson 8 &amp; Johnson is active in Baby Center and does control 9 it? 10 A. They're certainly "active" in it. 11 But the point I made was that they were not 12 responsible for every text that's written on the 13 website. 14 Q. So are you saying that even though 15 they own this website that they actively use to try 16 to promote their products, that they just ignore the 17 content, they don't vet the content; is that what 18 they're saying? 19 A. That is true, they do not vet the 20 content. There are things on there that may or may 21 not agree, but they do not vet it. It's written by 22 external pediatricians and others who play a role in 23 putting the text together. 24 Q. So they don't actually vet what goes 25 on this website that they own? Doesn't that sound</p>	<p style="text-align: right;">Page 164</p> <p>1 A. It's run by an external organization. 2 Q. What are they called? 3 A. I don't know what they're called. 4 Q. Who at Johnson &amp; Johnson is the 5 liaison with this third party? 6 A. Again, I do not know who that 7 individual is. It is run as an external system for 8 educating moms with babies. 9 Q. What meetings did you go to about 10 BabyCenter.com? 11 A. I personally have not been to 12 meetings with -- about BabyCenter.com. 13 Q. What pamphlets or information did you 14 receive about what they vet; what they don't vet; 15 how much control they exercise over it? 16 A. I have not received pamphlets as to 17 what they vet or do not vet. 18 Q. What about any correspondence? 19 A. Well, I've not seen correspondence in 20 the recent years. 21 Q. Can you point to one thing you've 22 actually seen that can back up what you're telling 23 the jury today about how they have no control over 24 the content, over BabyCenter.com? 25 A. Yes. I've discussed this with --</p>
<p style="text-align: right;">Page 163</p> <p>1 irresponsible? 2 MS. SULLIVAN: Objection, your Honor, 3 that's argument. 4 THE COURT: Objection sustained. 5 Please rephrase. 6 BY MR. PANATIER: 7 Q. So they don't vet anything that goes 8 on this domain name they own, Johnson &amp; Johnson? 9 A. They don't -- they don't control it. 10 They don't say, take that off, whatever. They may 11 have a dialogue. But it sounds difficult to explain 12 and it is difficult to explain, but they don't fully 13 own the text that goes on there. 14 Q. So let's explore -- let's vet, if you 15 will, some of your foundation for these statements, 16 okay? 17 A. Yes. 18 Q. When was BabyCenter.com purchased by 19 Johnson &amp; Johnson? 20 A. Several years ago. I don't remember 21 the exact year. It was maybe early 2000s from my 22 recollection. 23 Q. Early 2000s? 24 A. I think it was the early 2000s. 25 Q. Who runs it?</p>	<p style="text-align: right;">Page 165</p> <p>1 MR. PANATIER: Your Honor, I'm going 2 to object to hearsay. 3 THE COURT: Objection sustained. 4 The question was, have you seen 5 anything? 6 BY MR. PANATIER: 7 Q. Have you seen anything? 8 A. No. 9 MR. PANATIER: Your Honor, at this 10 time we're going to ask to put up BabyCenter.com on 11 its current form on the Internet. 12 MS. SULLIVAN: And, you Honor, I'm 13 just going to object to all the hearsay statements 14 from outside of J&amp;J. 15 MR. PANATIER: They own it, your 16 Honor. 17 THE COURT: Objection overruled. 18 You can go right ahead. 19 What's the marking for that? 20 MR. PANATIER: We would print this 21 out and we would make it 3695-24. 22 THE COURT: Thank you. 23 MR. PANATIER: Whenever you shut your 24 laptop, you have to go back on-line. 25 (There is a discussion off the</p>

<p style="text-align: right;">Page 166</p> <p>1 record.)</p> <p>2 BY MR. PANATIER:</p> <p>3 Q. Let's see if I'm on-line. There we</p> <p>4 go. It looks like it. Can you see Baby Center up</p> <p>5 there?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Let's go to babies. Let's see</p> <p>8 -- there we go. Okay. We'll go down here. Let's</p> <p>9 see here. Diaper, diapering and bottom care.</p> <p>10 That's probably where we will find baby powder,</p> <p>11 right? Right above "poop 101"?</p> <p>12 A. Yes, it's a good place as any.</p> <p>13 Q. Let's go to "diaper rash." Alright.</p> <p>14 Let's see here. "Diaper rash," let's click on this</p> <p>15 article.</p> <p>16 It actually says here that --</p> <p>17 underneath there it says, "written by Baby Center</p> <p>18 staff, reviewed by Baby Center Medical Advisory</p> <p>19 Board updated February 2017," right?</p> <p>20 A. Yes.</p> <p>21 Q. So it is, certainly, vetted by the</p> <p>22 Board as referenced right there, correct?</p> <p>23 A. Well, the Baby Center Medical</p> <p>24 Advisory Board is what I was talking about, the</p> <p>25 external advisors, medical physicians and others,</p>	<p style="text-align: right;">Page 168</p> <p>1 powder or cornstarch at all on children,</p> <p>2 specifically, because the particles can be harmful</p> <p>3 to their lungs, right?</p> <p>4 A. If inhaled, yes. And we talked about</p> <p>5 that. If you look on the pack, it talks about</p> <p>6 avoiding tipping a powder on your face and blocking</p> <p>7 your nose.</p> <p>8 Q. So the only way that a baby inhales</p> <p>9 powder is if you dump it in their face?</p> <p>10 A. No. But that's the one that causes</p> <p>11 most concern is if a baby grabs a carton of baby</p> <p>12 powder, tips it on its face, blocks the nose and</p> <p>13 mouth, that's dangerous.</p> <p>14 Q. This doesn't say that, though, does</p> <p>15 it?</p> <p>16 A. It's only saying it in a -- five</p> <p>17 words in a sentence.</p> <p>18 Q. Right. It says, "don't use it."</p> <p>19 Pretty simple, right?</p> <p>20 A. That's what it says.</p> <p>21 Q. And let me ask, does Johnson &amp;</p> <p>22 Johnson on its baby powder that it sells say, don't</p> <p>23 use this on your children?</p> <p>24 A. No, it's baby powder.</p> <p>25 Q. It still doesn't have anything but</p>
<p style="text-align: right;">Page 167</p> <p>1 nurses.</p> <p>2 Q. How do you know that's who you were</p> <p>3 talking about? When I asked you who you were</p> <p>4 talking about, you said, I didn't know.</p> <p>5 A. I thought I did. I thought I said it</p> <p>6 was an external group.</p> <p>7 Q. And you're telling us now that's the</p> <p>8 group?</p> <p>9 A. Well, that's one of the names of it,</p> <p>10 yes.</p> <p>11 Q. So let's look and see what they say</p> <p>12 about diaper rashes. Let's go to how do I -- let's</p> <p>13 see. How do I treat it? Let's see if that works.</p> <p>14 There we go. You see this right</p> <p>15 here? "Don't use powders or cornstarch because the</p> <p>16 particles can be harmful to a child's lungs if</p> <p>17 inhaled. Also some experts think cornstarch can</p> <p>18 make a yeast diaper rash worse." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And I've shown you that before,</p> <p>21 haven't I?</p> <p>22 A. You have, yes. And I don't disagree</p> <p>23 with it.</p> <p>24 Q. So Baby Center, the website that</p> <p>25 Johnson &amp; Johnson owns says that you shouldn't use</p>	<p style="text-align: right;">Page 169</p> <p>1 the twisty lid, right?</p> <p>2 A. If you look at the cap.</p> <p>3 Q. Just can you just answer that</p> <p>4 question?</p> <p>5 A. It has a twist --</p> <p>6 MS. SULLIVAN: Your Honor --</p> <p>7 A. What am I about to say --</p> <p>8 THE COURT: Wait, wait. Hold on. I</p> <p>9 can't have three people talking at the same time.</p> <p>10 The question was?</p> <p>11 Q. All that the bottle currently has is</p> <p>12 the twist lid at the top that opens and shuts the</p> <p>13 holes, correct?</p> <p>14 A. It has twist lid which opens and</p> <p>15 closes holes which are around the perimeter which</p> <p>16 retard or reduce the amount of powder that can come</p> <p>17 out and cause a nasal blockage.</p> <p>18 Q. As opposed to just taking off and</p> <p>19 having the full mouth of the container?</p> <p>20 A. Well, they've never had the full</p> <p>21 mouth of the container. They always had a series of</p> <p>22 ten or seven holes in there.</p> <p>23 Q. Alright. So we were talking about</p> <p>24 tremolite earlier today. Do you recall that?</p> <p>25 A. Yes, yes.</p>

<p style="text-align: right;">Page 170</p> <p>1 Q. I'm sure you do.</p> <p>2 A. Yes.</p> <p>3 Q. One of the documents that we saw last</p> <p>4 week from defense Counsel was Defense Exhibit 7044.</p> <p>5 It's in evidence. That's this document right here.</p> <p>6 And this is Fred Pooley, right? We've</p> <p>7 talked about Fred Pooley, you and I already, haven't</p> <p>8 we?</p> <p>9 A. Yes.</p> <p>10 Q. And Fred Pooley in 1972 he reported</p> <p>11 that he had looked at some samples going back to</p> <p>12 1949 as well as in the 00000 talc, that's the</p> <p>13 Italian, right?</p> <p>14 A. Yes.</p> <p>15 Q. And you can see he says that, "No</p> <p>16 chrysotile was found at the mine or in samples</p> <p>17 taken. Some tremolite was located but was not</p> <p>18 asbestiform in character and has not been detected</p> <p>19 in 00000 talc imported into Great Britain for the</p> <p>20 past year nor in shipments dating back to 1949."</p> <p>21 When Johnson &amp; Johnson received this,</p> <p>22 did they send to Dr. Pooley all of those Battelle</p> <p>23 memorial reports that you and I had showing</p> <p>24 tremolite again and again and again in the Italian</p> <p>25 talc?</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. Now, Johnson &amp; Johnson would from</p> <p>2 time to time vet other talc sources, correct?</p> <p>3 A. I wouldn't use the word "vet." This</p> <p>4 Project 101 was to look at some like 50 different</p> <p>5 talc sources in the United States as options for</p> <p>6 when the Vermont mine ran of talc.</p> <p>7 Q. Okay.</p> <p>8 A. So they looked at that particular</p> <p>9 mine, yes.</p> <p>10 Q. They looked at alternative sources?</p> <p>11 A. They looked at about 50 different</p> <p>12 mines.</p> <p>13 Q. Right. North Carolina never ended up</p> <p>14 being a source that they used, right?</p> <p>15 A. They never ever use any source other</p> <p>16 than in Vermont.</p> <p>17 Q. Now, if you will turn to the page</p> <p>18 that he signed, the page marked three. Do you see</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. Right. They decided not to use the</p> <p>22 North Carolina, correct?</p> <p>23 A. Yes, correct.</p> <p>24 Q. Right. And you see under</p> <p>25 "conclusions" they've got some complaints. One they</p>
<p style="text-align: right;">Page 171</p> <p>1 A. I don't know. But I can tell you</p> <p>2 that Dr. --</p> <p>3 MR. PANATIER: Your Honor, I would</p> <p>4 object as to nonresponsive.</p> <p>5 A. I don't know then.</p> <p>6 THE COURT: Just -- thank you, thank</p> <p>7 you.</p> <p>8 MR. PANATIER: This will be</p> <p>9 Exhibit 3127.</p> <p>10 Q. This is dated March 3rd, '72. So it</p> <p>11 should be in your first binder. Does that one go to</p> <p>12 March 3rd, '72?</p> <p>13 A. Give me a second.</p> <p>14 Q. Sure.</p> <p>15 A. Yep.</p> <p>16 Q. Yep, you found it.</p> <p>17 A. Yep.</p> <p>18 Q. Okay, great.</p> <p>19 Do you see that this is a Johnson &amp; Johnson</p> <p>20 memo. It is from, I believe, it's from Mr. Russell.</p> <p>21 Yes, R.S. Russell dated March 3rd, 1972?</p> <p>22 A. Yes.</p> <p>23 Q. And the subject is "domestic talc</p> <p>24 sources 101, North Carolina"?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 173</p> <p>1 said it's badly off color, but they say, also the</p> <p>2 presence of tremolitic amphibole is "bad," right?</p> <p>3 A. That's what is written, yes.</p> <p>4 Q. We know that tremolitic amphibole was</p> <p>5 all throughout the Italian and in Vermont, correct?</p> <p>6 A. We know that tremolite is present in</p> <p>7 the Italian talc, yes.</p> <p>8 Q. Literally tremolitic amphibole is</p> <p>9 present --</p> <p>10 A. Well, amphibole is a --</p> <p>11 Q. Let me finish the question first.</p> <p>12 Sorry.</p> <p>13 Tremolitic amphibole is in the Vermont and</p> <p>14 the Italian talc, correct?</p> <p>15 A. There was amphibole in the Italian</p> <p>16 and Vermont talc, which can be in the form of</p> <p>17 tremolite.</p> <p>18 Q. Okay. And that's what he's saying</p> <p>19 here. They decide not to use it for two reasons,</p> <p>20 the color and the fact that there's tremolitic</p> <p>21 amphibole?</p> <p>22 A. Yes, it's unpleasant on the skin. If</p> <p>23 you have a lot, it's very prickly.</p> <p>24 Q. Oh, that's why, because it doesn't</p> <p>25 feel good on the skin?</p>

<p style="text-align: right;">Page 174</p> <p>1 A. It, certainly, does not. If it's 2 needlelike and prickly, it does not feel good on the 3 skin. 4 Q. Let's take a peak at it. Go ahead 5 and look at the second page where it says, 6 "tremolitic amphibole." "The amphibole appears to 7 be tremolitic and occurs in columnar bundles and 8 individual long, thin prismatic crystals," correct? 9 A. Yes. 10 Q. And we know that that description, 11 right, if you have long thin, whatever you want to 12 call it, bundles or prismatic crystals, that's going 13 to meet the definition that Johnson &amp; Johnson has 14 set out for asbestos, correct? 15 A. No. To meet the definition for 16 asbestos, it has to be what's called asbestiform. 17 That's a geological and mineralogical definition. 18 Q. Hold on. Let us step back to Johnson 19 &amp; Johnson's own definitions. That's the 20 asbestiform? 21 A. No, but I did. 22 Q. Yeah, I know you did. Did J&amp;J? 23 A. They talk about the fibrous forms of 24 those minerals. 25 Q. Is that the asbestiform?</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. SULLIVAN: Your Honor, I'm just 2 going to object. Counsel keeps interrupting Dr. 3 Hopkins. 4 MR. PANATIER: I'm going to object. 5 THE COURT: Okay. The Court Reporter 6 can't take multiple people speaking at the same 7 time. 8 Dr. Hopkins you are not answering the 9 question. The objection is overruled. 10 MR. PANATIER: I'll move to strike, 11 your Honor. 12 THE COURT: Stricken. 13 The Jury is not to consider that last 14 response. 15 One more time. 16 BY MR. PANATIER: 17 Q. Dr. Hopkins, testing method 7024 put 18 together by J&amp;J, right, they're TEM method, defines 19 asbestiform as a fiber of 3-to-1, does it not? 20 A. The definition of fiber is 3-to-1. 21 Yes, we saw that this morning. 22 Q. And they don't say anything about 23 what it means from a geological perspective or what 24 it might mean from a commercial perspective, do 25 they?</p>
<p style="text-align: right;">Page 175</p> <p>1 A. No, it's defining asbestos. 2 Q. Right. 3 A. Which has to be the asbestiform 4 version. 5 Q. Wait. Okay. I don't want to keep 6 going back and forth. But the reason I put these up 7 here was so we can see exactly how J&amp;J defines them. 8 And you keep saying "asbestiform." 9 That word doesn't appear in Johnson &amp; 10 Johnson's own definition, does it? 11 A. It doesn't appear on those 12 definitions. It does appear in other definitions on 13 the specification of the product. 14 Q. It appears -- right, in 7024 the word 15 "asbestiform" appears, correct? 16 A. The word "asbestiform" appears where 17 it's used to describe a mineral in the -- of the 18 asbestos character. 19 Q. Right. And it describes it as a 20 fiber that's 3-to-1, doesn't it? 21 A. Well, that's one definition. 22 Q. That's the only definition in 7024. 23 A. But geologists give a bigger -- okay. 24 Q. Just try to -- just answer the 25 question.</p>	<p style="text-align: right;">Page 177</p> <p>1 A. Not in that short sentence version, 2 no. 3 Q. But that's the protocol that people 4 are supposed to use to determine whether asbestos is 5 present when they test J&amp;J talc by TEM, right? 6 A. People who test it use that protocol, 7 correct. 8 Q. Okay. So let's go back to this 9 document. He finds some "long thin prismatic 10 crystals of tremolitic amphibole," correct? 11 A. You read what is written. 12 Q. Right? And he says it's "bad." 13 Now you said, well, it's bad because it 14 feels prickly on the skin, right? 15 A. It does feel prickly on the skin. 16 You wouldn't simulate nice soft baby powder, which 17 is prickly. 18 Q. You know that Johnson &amp; Johnson 19 actually admits in documents that I've shown you 20 that that was never the case? You know that, right? 21 MS. SULLIVAN: Objection, your Honor, 22 foundation and argumentative. 23 MR. PANATIER: I'm just asking if he 24 knows. 25 THE COURT: Objection is overruled.</p>

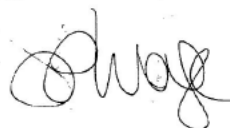
<p style="text-align: right;">Page 178</p> <p>1 You can answer.</p> <p>2 A. No, I don't -- I stand by my answer,</p> <p>3 that if you've got prickly particles, it doesn't</p> <p>4 feel good on the skin.</p> <p>5 Q. I would agree, generally, with you.</p> <p>6 Right, if something is prickly, you don't want that</p> <p>7 on your skin?</p> <p>8 A. Yeah, and, therefore, you consider it</p> <p>9 "bad," as he said.</p> <p>10 Q. Does he mention that at all as the</p> <p>11 reason they didn't want tremolite?</p> <p>12 A. Not in that letter, no.</p> <p>13 Q. And, in fact, sir, by '72, Johnson &amp;</p> <p>14 Johnson was well into the issue of asbestos in talc,</p> <p>15 correct?</p> <p>16 A. The company was fully aware of the</p> <p>17 controversy and the discussions on asbestos in talc</p> <p>18 by '72.</p> <p>19 MR. PANATIER: We offer this document</p> <p>20 into evidence, 3127, your Honor.</p> <p>21 MS. SULLIVAN: No objection.</p> <p>22 THE COURT: Okay. So admitted.</p> <p>23 (Plaintiff's Exhibit 3695-27 was</p> <p>24 moved into evidence.)</p> <p>25 BY MR. PANATIER:</p>	<p style="text-align: right;">Page 180</p> <p>1 A. Paper, paper, letters you mean?</p> <p>2 Q. Paper, yeah.</p> <p>3 A. No, I tended to use the phone and</p> <p>4 e-mail but, yeah, the idea of using paper, no. I</p> <p>5 didn't have an inbox and outbox. I mean, I would</p> <p>6 have seen documents. But I, personally, avoided</p> <p>7 writing letters on paper when I could pick up the</p> <p>8 phone.</p> <p>9 Q. You know what an inbox in?</p> <p>10 A. Yes, I do recollect that.</p> <p>11 Q. When something comes in, it goes in</p> <p>12 the inbox, right?</p> <p>13 A. Yes. It's like on my e-mail.</p> <p>14 Q. Right. Outbox would be the reverse,</p> <p>15 it is when something goes out, right?</p> <p>16 A. Yes.</p> <p>17 Q. So, as we go forward, what I want to</p> <p>18 do is, I want to kind of examine what was in Johnson</p> <p>19 &amp; Johnson's inbox, okay, what information they were</p> <p>20 receiving and then what information was in their</p> <p>21 outbox, what they were sending out to people, okay?</p> <p>22 A. Sure.</p> <p>23 Q. Alright. And so we can kind of keep</p> <p>24 this organized, I actually made an inbox, you see,</p> <p>25 right?</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. He doesn't say anything about skin,</p> <p>2 true?</p> <p>3 A. No, it's a very short memo talking</p> <p>4 about a particular mine in the State of North</p> <p>5 Carolina.</p> <p>6 Q. The question I asked is, does he say</p> <p>7 anything about tremolite being "bad" because of how</p> <p>8 it feels on the skin?</p> <p>9 A. He does not specify that, no.</p> <p>10 Q. Alright. So here's a thing I wanted</p> <p>11 to talk to you about, which is when you were at</p> <p>12 Johnson &amp; Johnson up until 2000, at some point were</p> <p>13 you an executive there?</p> <p>14 A. Yes.</p> <p>15 Q. An executive, I guess, did you have</p> <p>16 your own desk?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And on your desk, I guess,</p> <p>19 part of this era was an e-mail era and part of it</p> <p>20 was probably in the more analog era, correct?</p> <p>21 A. Yes.</p> <p>22 Q. So we think inbox/outbox now as being</p> <p>23 e-mail, but did you, actually, have an inbox and an</p> <p>24 outbox on your desk where people would bring you</p> <p>25 documents or you might send something out?</p>	<p style="text-align: right;">Page 181</p> <p>1 Okay. And what we're going to put in this</p> <p>2 inbox is any information --</p> <p>3 MS. SULLIVAN: I'm sorry, Counsel,</p> <p>4 can I just see what you put in there?</p> <p>5 MR. PANATIER: Yeah.</p> <p>6 BY MR. PANATIER:</p> <p>7 Q. Any information to Johnson &amp; Johnson</p> <p>8 about asbestos fibers, needles or amphiboles, okay.</p> <p>9 And so we're going to put -- we'll put the inbox</p> <p>10 right there.</p> <p>11 And then so we can evaluate what</p> <p>12 Johnson &amp; Johnson sent out to other people, we have</p> <p>13 an outbox, okay. And this one says, out to</p> <p>14 customers, nurses, doctors, regulators, employees</p> <p>15 and the public, okay? Is that okay with you?</p> <p>16 A. If that's the game you want to play.</p> <p>17 THE COURT: Can you show it to</p> <p>18 Counsel.</p> <p>19 MR. PANATIER: Yeah.</p> <p>20 MS. SULLIVAN: Okay.</p> <p>21 BY MR. PANATIER:</p> <p>22 Q. I'm sorry, if that's "the game" I</p> <p>23 want to play?</p> <p>24 A. Yeah.</p> <p>25 Q. You think it's a "game"?</p>

<p style="text-align: right;">Page 182</p> <p>1 A. Well, it's a lot of props there.</p> <p>2 Q. Well, if you think inbox and outbox</p> <p>3 are "props," do you have an objection to us</p> <p>4 demonstrating?</p> <p>5 A. No, I have no objection. I have no</p> <p>6 objection. You carry on with your demonstration.</p> <p>7 Q. Do you have an objection showing the</p> <p>8 jury what Johnson &amp; Johnson had at its disposal</p> <p>9 about what might be in the talc it was selling for</p> <p>10 babies? Do you have any objection to that?</p> <p>11 A. None whatsoever.</p> <p>12 Q. Do you have an objection to my</p> <p>13 showing the jury what Johnson &amp; Johnson told other</p> <p>14 people about what was in their products, such as</p> <p>15 nurses, doctors, regulators and their own employees</p> <p>16 and the public?</p> <p>17 A. None whatsoever.</p> <p>18 Q. Alright. So our first entry into the</p> <p>19 outbox is going to be those interrogatories that we</p> <p>20 went over for the year 2000 earlier this morning</p> <p>21 that Ms. Musco signed. Do you remember that?</p> <p>22 A. Yes. I do, yes.</p> <p>23 Q. Where they said, after decades and</p> <p>24 decades, they said no tremolite, right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 184</p> <p>1 Musco and Counsel?</p> <p>2 A. Yeah.</p> <p>3 Q. Anyway, we know this is what was said</p> <p>4 publically, correct?</p> <p>5 A. It was said in an interrogatory, yes.</p> <p>6 Q. Right. In a lawsuit, correct?</p> <p>7 A. I believe so.</p> <p>8 Q. Okay. We talked this morning about</p> <p>9 how Dr. Langer maintained that there was asbestos in</p> <p>10 the baby powder, correct?</p> <p>11 A. That's what he said, yeah.</p> <p>12 THE COURT: Counsel, if you are</p> <p>13 placing documents in certain categories, you need to</p> <p>14 specify for the record that cannot see what you're</p> <p>15 doing.</p> <p>16 MR. PANATIER: Okay. I will say it.</p> <p>17 I will say it.</p> <p>18 THE COURT: Thank you.</p> <p>19 BY MR. PANATIER:</p> <p>20 Q. In the Russell memo, "tremolite is</p> <p>21 bad" we're going to put that in the inbox, too.</p> <p>22 So let's come back to this concept of</p> <p>23 the use of Johnson's Baby Powder and how people will</p> <p>24 use it.</p> <p>25 Johnson &amp; Johnson recommended all sorts of</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. What they had in the inbox, of</p> <p>2 course, was lots of tremolite from Battelle,</p> <p>3 correct?</p> <p>4 A. Yes. There's never been any denial</p> <p>5 of that.</p> <p>6 Q. Except for right here?</p> <p>7 A. Well, I think she made a mistake</p> <p>8 there, by the way.</p> <p>9 Q. Well, it would have to be not just</p> <p>10 she making a mistake, right, because she answered</p> <p>11 the questions based on help from the lawyers, right?</p> <p>12 A. Well, we saw the word "Counsel," yes.</p> <p>13 Q. Right. So let me ask you this</p> <p>14 question.</p> <p>15 At this time do you remember the millions of</p> <p>16 documents you and I have talked about, have they</p> <p>17 been released by Johnson &amp; Johnson in 2000?</p> <p>18 A. I don't know.</p> <p>19 Q. Had Johnson &amp; Johnson released those</p> <p>20 Battelle studies before 2016?</p> <p>21 A. I don't know.</p> <p>22 Q. Because what you said was, yes, it's</p> <p>23 wrong, but I don't know whether it was intentional.</p> <p>24 That would have to be, at least, assuming only one</p> <p>25 lawyer, at least, two people, right, if you have</p>	<p style="text-align: right;">Page 185</p> <p>1 uses for the baby powder outside of just putting it</p> <p>2 on babies, right?</p> <p>3 A. Well, you need to be a bit more</p> <p>4 specific. I'm happy to comment, if I have some</p> <p>5 sentence to comment on.</p> <p>6 Q. I can do that.</p> <p>7 A. Thank you.</p> <p>8 MR. PANATIER: This will be</p> <p>9 Exhibit 3695-25. Here you go, your Honor.</p> <p>10 THE COURT: Thank you.</p> <p>11 BY MR. PANATIER:</p> <p>12 Q. There you go, sir.</p> <p>13 A. Thank you.</p> <p>14 Q. Sir, do you see that this is a memo</p> <p>15 with the Johnson's baby logo at the top?</p> <p>16 A. Yes.</p> <p>17 Q. And you see that it has Johnson's</p> <p>18 Baby Oil, Johnson's Baby Powder and then a series of</p> <p>19 uses for these products, correct, that are</p> <p>20 recommended?</p> <p>21 A. You're showing me a memo, but it</p> <p>22 doesn't say whose written it or when it was written.</p> <p>23 What was this done by a press release agency or is</p> <p>24 this from Johnson &amp; Johnson?</p> <p>25 Q. Well, that's a great question, but I</p>

<p style="text-align: right;">Page 186</p> <p>1 got the documents from you. So this one is not --  2 this one is not dated, but this is a Johnson &amp;  3 Johnson -- for the record, it's Bates range J&amp;J Talc  4 000628263 produced by Johnson &amp; Johnson.  5 MS. SULLIVAN: I'll just note,  6 Counsel, the one you gave me has no Bates number on  7 it. It is J&amp;J ine.  8 MR. PANATIER: It was produced in  9 native format, your Honor. I had to go look up the  10 Bates range?  11 Is there anything else.  12 MS. SULLIVAN: I don't know why he  13 can't use the Bates numbers.  14 THE COURT: Sidebar.  15 (Sidebar.)  16 MR. PANATIER: If Counsel doesn't  17 understand how their own production works, I can't  18 work with that. This is -- they produced a certain  19 number of documents in their, quote, unquote,  20 "native" format, which means, not a copy of the  21 document, it's in the actual -- like, for instance,  22 in a Power Point, they would produce the actual  23 Power Point, not a copy of the Power Point.  24 THE COURT: So they never Bates  25 range?</p>	<p style="text-align: right;">Page 188</p> <p>1 understand this.  2 MR. PANATIER: Yeah.  3 THE COURT: When you go and print out  4 these documents that are produced, quote, unquote,  5 in their "native" --  6 MR. PANATIER: Right.  7 THE COURT: -- whatever that  8 terminology is --  9 MR. PANATIER: Right.  10 THE COURT: -- A Bates number does  11 not come out?  12 MR. PANATIER: Correct. That's a  13 Power Point, an Excel spreadsheet, a Word document,  14 if they produce them in native, they're not going to  15 add a Bates stamp to the original file. Now, if  16 they produce -- for instance, a lot of these memos  17 are old, old memos, they are photocopies, they put  18 the Bate Stamp right on them. So they produce them  19 in two ways.  20 MS. SULLIVAN: Counsel has the Bates  21 numbers. They've been given them. I don't know why  22 he just doesn't use them.  23 THE COURT: He's indicated now what  24 the Bates number is. I would ask your office to  25 verify this information, if you're concerned.</p>
<p style="text-align: right;">Page 187</p> <p>1 MR. PANATIER: So they don't Bates  2 range native documents.  3 THE COURT: So how did J&amp;J Bates  4 numbers become created?  5 MR. PANATIER: I have to go look up  6 on the document management software what Bates label  7 they gave to the native. But when you print the  8 native because it's native and they don't want it  9 messed with, it doesn't print with the Bates Stamp.  10 It's not on the native. But I am telling the Court  11 that this is the correct Bates number for this  12 document.  13 THE COURT: JJ0006286 what was after  14 that?  15 MR. PANATIER: Three.  16 MS. SULLIVAN: Your Honor, just for  17 the record, we have given Bates numbers to every  18 single document we've produced. In every other  19 trial people are using the Bates stamp numbers so we  20 can tell whose file it comes from. I'm not sure why  21 Counsel can't just use the Bates numbers.  22 MR. PANATIER: This is not a Bates  23 stamped document. Counsel can go look at her own  24 documents.  25 THE COURT: So I'm trying to</p>	<p style="text-align: right;">Page 189</p> <p>1 MR. PANATIER: I'd like to come back  2 to it. If they want to verify it, it's not a big  3 deal.  4 MS. SULLIVAN: I mean, I just don't  5 know if it's from a third party. I have no idea  6 where it's coming from.  7 MR. PANATIER: How about this. I'll  8 set it aside, if Counsel wants to check and verify,  9 if they have issues with it, that's fine, I'll just  10 come back to it.  11 THE COURT: Okay. Definitely, that's  12 what we'll do.  13 MR. PANATIER: We'll come back to  14 this.  15 BY MR. PANATIER:  16 Q. Okay. You should have a document  17 that has a tab that says "1985" on it. So, if you  18 go into that range, it's probably the second or  19 third notebook.  20 (There is a discussion off the  21 record.)  22 Q. You found that, sir?  23 A. Yes.  24 Q. Okay, great. This will be  25 Exhibit 2064.</p>

<p style="text-align: right;">Page 190</p> <p>1 And do you see, Doctor, that is a 2 document called "Technological Forecast Powders"? 3 Do you see that? 4 A. Yes. 5 MR. PANATIER: Okay. Your Honor, at 6 this time I would offer this into evidence. 7 THE COURT: Any objection? 8 MS. SULLIVAN: A second, your Honor, 9 until I look at it. No objection. 10 THE COURT: So admitted. 11 (Plaintiff's Exhibit 2064 was 12 moved into evidence.) 13 THE COURT: What does the cover sheet 14 say on that, Counsel? 15 MR. PANATIER: "Technological 16 Forecast." 17 THE COURT: From 1984. Okay, 18 proceed. 19 BY MR. PANATIER: 20 Q. Okay. Sure. 21 Alright. So this is the type of 22 document that a company will do to talk about how 23 their products are doing, what they forecast them to 24 doing in coming years, correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 192</p> <p>1 this year which, I believe, is '84, '85, they have 2 Johnson's Baby Powder and they have the amount of 3 money. They have market share and then the ounces, 4 total ounces sold. Do you see that? 5 A. Yes. 6 Q. So, if you look at the talc and 7 cornstarch section that they have there, the market 8 share for that was 115 million; is that right? 9 Right here. 10 A. I see, yeah, yeah, yeah. 11 Q. And they got, approximately, oh, 41 12 percent of that, right? 13 A. Yes. 14 Q. Okay. And they got about -- they got 15 218 million ounces out of the 564 million ounces 16 sold, true? 17 A. Yes. 18 Q. Under "Major Issue," "Major Issue is 19 the future of a category under a safety cloud and 20 without an alternate reason for being." 21 Okay. Now, when you got to the 22 company in '76 -- right, that was when you got 23 there? 24 A. Yes. 25 Q. At some point did you have a</p>
<p style="text-align: right;">Page 191</p> <p>1 Q. If we go to the third page under 2 "Safety Factors." Can you see that, sir? 3 A. Yes. 4 Q. "Safety of cosmetic powders has been 5 a concern especially among health professionals. 6 They have decided that powders provide no health 7 benefit. Therefore, the potential for harm from 8 respirables or accidental overexposure should be 9 avoided. Mothers are now being advised not to use 10 baby powder especially talc baby powders." 11 Okay. Did I read that right? 12 A. You did, yes. 13 Q. Okay. If you'll turn please, sir, to 14 the page marked eight. They have a section called 15 "Market Dynamics." You can see there it says, 16 "Second, baby care professionals now sometimes 17 recommend against the use of talcum or cornstarch 18 powders" -- and then they give some statistics -- 19 "because perceived risk exists that there are no 20 health benefits." 21 Now you've confirmed for us, there are no 22 health benefits, correct? 23 A. Well, there are no medical benefits, 24 yeah. 25 Q. And then they have, at least, for</p>	<p style="text-align: right;">Page 193</p> <p>1 responsibility for evaluating the safety of the baby 2 powder? 3 A. Yes. 4 Q. In fact, it became -- by the '90s, 5 were you the head person in charge of the safety of 6 the baby powder? 7 A. In the UK, certainly, yes, until I 8 moved here to the US in '90 -- end of '94. 9 Q. Okay. And at the end of '94, did you 10 continue in that same role here? 11 A. Yes. 12 Q. Alright. So what do they mean when 13 they say "a safety cloud"? 14 A. Well, because if you -- and I'm sure 15 you're going to show it. There are -- there have 16 been in the early '70s a number of reports, later 17 shown to be erroneous, were people claimed they 18 found asbestos in the product. And that like a bad 19 smell, it doesn't blow away, that was kind of 20 hanging around. So there was an issue, although, in 21 reality the company was confident that there was no 22 asbestos. But there is that cloud. 23 Q. When you say, that were later -- what 24 did you say later disproven? 25 A. Yeah.</p>

<p style="text-align: right;">Page 194</p> <p>1 Q. We're not talking about Dr. Langer, 2 though, right?</p> <p>3 A. Yes, Dr. Langer published a paper 4 back in '76 with Dr. Rolle.</p> <p>5 Q. Are you just going to ignore what he 6 said six months ago?</p> <p>7 MS. SULLIVAN: Objection, your Honor, 8 that's argument.</p> <p>9 THE COURT: Overruled. 10 You can answer.</p> <p>11 A. What he said is what he said, but it 12 was not what he wrote in a peer reviewed published 13 literature of scientific literature.</p> <p>14 Q. You're aware that he tested more than 15 two bottles of baby powder ever, correct?</p> <p>16 A. Yes, he tested a lot of bottles.</p> <p>17 Q. Then you see here it says, "It is 18 possible to hypothesize that pursuit of technologies 19 which would create talc based powders of higher 20 interest than JPB to adults could be profitable. 21 Major effort should be expended to prove a health 22 benefit for cosmetic dusting powders," right?</p> <p>23 A. Well, that's what someone has written 24 they're suggesting, yeah.</p> <p>25 Q. "Someone" at Johnson &amp; Johnson,</p>	<p style="text-align: right;">Page 196</p> <p>1 MR. PANATIER: Here's your copy. I'm 2 using the July 30th and then I'll use that one.</p> <p>3 MS. SULLIVAN: I don't see an exhibit 4 number.</p> <p>5 MR. PANATIER: This will be 6 Exhibit 2614.</p> <p>7 BY MR. PANATIER:</p> <p>8 A. Well, there you go, because I'm not 9 sure which volume that is in.</p> <p>10 Q. Probably -- this one, July 30, '71.</p> <p>11 A. Yeah, here it is.</p> <p>12 Q. Okay. So that's a memo from 13 Hildick-Smith. There is a stamp over his name on 14 the bottom, but that's from Hildick-Smith received 15 by Nashed and it's to Dr. Fuller regarding a 16 conversation with Dr. Clark Cooper at the School of 17 Public Health University of California, right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. 1971, true?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 MR. PANATIER: I offer this into 23 evidence, your Honor, Exhibit 2614.</p> <p>24 MS. SULLIVAN: No objection.</p> <p>25 THE COURT: So admitted.</p>
<p style="text-align: right;">Page 195</p> <p>1 correct?</p> <p>2 A. Well, that's why I'm puzzled, because 3 I'm not sure who wrote this.</p> <p>4 Q. Are you saying that someone else is 5 doing all this analysis and writing about all these 6 issues other than Johnson &amp; Johnson in a document 7 with a Johnson &amp; Johnson Bates Stamp that you 8 produced to us?</p> <p>9 A. I don't know. But what I'm saying is 10 there is no author. So I don't know -- you asked me 11 who wrote it or who the -- if it was a Johnson &amp; 12 Johnson, but I said there's no author. But the 13 document speaks to itself. I'm not disputing what 14 is written.</p> <p>15 (There is a discussion off the 16 record.)</p> <p>17 Q. So they said they wanted to try to 18 provide a health benefit, right?</p> <p>19 A. Well, the person who is writing this 20 document, whoever he or she is, is going down that 21 route, yeah.</p> <p>22 (There is a discussion off the 23 record.)</p> <p>24 Q. Alright. This document is 25 Exhibit 2614 and it is dated July 30, 1971.</p>	<p style="text-align: right;">Page 197</p> <p>1 (Plaintiff's Exhibit 2614 was 2 moved into evidence.)</p> <p>3 BY MR. PANATIER:</p> <p>4 Q. He says, "At Dr. Crowley's 5 suggestion, conversation was held with Dr. Clark 6 Cooper of the School of Public Health University of 7 California Berkeley. Dr. Cooper had worked at the 8 National Center for Urban and Industrial Health and 9 later moved to the School of Public Health at 10 Berkeley. Dr. Cooper was chairman of the National 11 Research Council, review of asbestos and its 12 potential health hazards which published an 13 excellent review on the subject. Dr. Cooper was 14 called in the hope that he might be able to attend 15 the FDA meeting on August 3rd. He is in a position 16 to oversee epidemiological studies, conduct 17 analytical studies on talc and allied materials and 18 conduct animal studies on appropriate materials. He 19 would be pleased to discuss this area at anytime.</p> <p>20 In asking Dr. Cooper his thoughts concerning 21 the asbestos content of talc and the use of talcs 22 for cosmetics, he indicated that in his opinion 23 there is no place for asbestos in cosmetic talcs and 24 would withdraw from the market any talcs that 25 contained asbestos."</p>

<p style="text-align: right;">Page 198</p> <p>1 First of all -- let me stop there.</p> <p>2 Johnson &amp; Johnson agrees that if the baby</p> <p>3 powder has asbestos, it should be withdrawn from the</p> <p>4 market immediately, correct?</p> <p>5 A. It wouldn't be sold in the first</p> <p>6 place.</p> <p>7 Q. Can you answer my question?</p> <p>8 A. So the answer would be, yes.</p> <p>9 Q. Right? It is possible that a company</p> <p>10 could sell a product and then discover a problem at</p> <p>11 which point they would need to recall it, right?</p> <p>12 A. That's the normal operation, yes.</p> <p>13 Q. It continues that Dr. Cooper said</p> <p>14 that he did not believe that there was a low level</p> <p>15 of asbestos content in talc which would be</p> <p>16 acceptable for cosmetic ore.</p> <p>17 And Johnson &amp; Johnson agrees with that, the</p> <p>18 acceptable level of asbestos in cosmetic talc zero,</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So this is another</p> <p>22 third-party. This person at Berkeley, who has</p> <p>23 opined that asbestos in cosmetic talc to Johnson &amp;</p> <p>24 Johnson would be a hazard, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 200</p> <p>1 CERTIFICATION</p> <p>2</p> <p>3 I, SILVIA P. WAGE, C.S.R., License Number</p> <p>4 30X100182700, a Certified Court Reporter in and for</p> <p>5 the State of New Jersey, do hereby certify the</p> <p>6 foregoing to be prepared in full compliance with the</p> <p>7 current Transcript Format for Judicial Proceedings</p> <p>8 non-compressed transcript</p> <p>9 dge and ability.</p> <p>10 </p> <p>11</p> <p>12 SILVIA P. WAGE JULY 22, 2019</p> <p>13 CERTIFIED COURT REPORTER DATE</p> <p>14 MIDDLESEX COUNTY COURTHOUSE</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 199</p> <p>1 Q. Okay. I'll put that in the inbox.</p> <p>2 Let's look at the next document,</p> <p>3 which is April 13, 1976. So, if you'll turn to</p> <p>4 April 13, 1976. And, actually, this tab just says</p> <p>5 "1976," so it will likely be the first 1976 document</p> <p>6 that you have. Keep going back.</p> <p>7 A. Okay. It's March.</p> <p>8 Q. Keep going back. Yeah. It's</p> <p>9 probably -- it's one of those. Okay. So go ahead</p> <p>10 and turn the page. It's one of those three there.</p> <p>11 So let's go to the next one there. Yeah, keep</p> <p>12 going. Next one. That's it.</p> <p>13 Okay. Sorry about that.</p> <p>14 Okay. You see this is a memo from</p> <p>15 D.R. Petterson to D.D. Johnston, right?</p> <p>16 A. It is, yes.</p> <p>17 Q. Now, D.D. Johnston was President of</p> <p>18 the Baby Products Company, true?</p> <p>19 A. I think he was at that time, yes,</p> <p>20 yes.</p> <p>21 Q. Petterson, medical director, right?</p> <p>22 A. He was, yes.</p> <p>23 (Continuation of the day's</p> <p>24 proceedings in Volume 2.)</p> <p>25</p>	

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# Exhibit 6

**JOHNSON & JOHNSON BABY POWDER  
QUESTIONS AND ANSWERS**

**- LIST OF NEW/CHANGED QUESTIONS -  
OCTOBER, 1985**

**New Questions:**

**II. Talc - Inhalation**

**Qs: 7, 8 (page 12)**

**III. Talc - Translocation**

**Qs: 2, 3, 4, 5 (pages 15 - 17)**

**IV. Talc - Misuse**

**Qs: 7, 8 (page 23)**

**IX. Baby Cornstarch**

**Q: 3 (page 36)**

**X. Test Market - Baby Powder with Cornstarch**

**Qs: 1 - 8 (New Section, pages 39 - 41)**

**Changed Questions:**

**II. Talc - Inhalation**

**Q: 4 (page 10)**

**III. Talc - Translocation**

**Qs: 1, 6, 9 (pages 15, 17, 18)**

**IV. Talc - Misuse**

**Q: 6 (page 23)**

**VI. Baby Powder Manufacturing**

**Q: 3 (page 28)**

**JOHNSON & JOHNSON BABY POWDER**  
**QUESTIONS AND ANSWERS**

**CONFIDENTIAL**

**October, 1985**

The attached Question and Answer document has been developed for limited internal distribution in response to the need for clarification of issues relating to baby powder and talc. Specifically, its sole purpose at this time is to provide designated company spokespersons with answers to questions which could be raised by the press. It is not meant for distribution to anyone other than the individuals who will act as company spokespersons as necessary. Those recommended as spokespersons are:

James Murray, Assistant Director, Corporate Public Relations  
James Utaski, President, Johnson & Johnson Baby Products Co.  
Tom Gardner, Vice President, General Manager  
Jim Dettre, Director of Communications

The 82 answers in the document were written in anticipation of potential questions. Many questions and answers were intentionally developed as versions of others already in the document in an effort to anticipate all angles of questioning and to prepare the spokespersons with responses which

- 1) Stand on their own as reflective of the corporate position.
- 2) Reflect and reinforce the approved communications objectives developed during a media training session.

These communications objectives are:

- a) Johnson & Johnson Baby Powder, used properly, is safe. Extensive, scientifically documented evidence supports this claim as does the Food and Drug Administration (FDA).
- b) No one knows more about safe, high quality baby care than the Johnson & Johnson Baby Products Company. To ensure continued confidence in our baby powder, we will conduct research as needed to reconfirm the safety of the product.

The Q & A document will be revised and updated as events or new research findings impact on the scope of potential questions or on existing responses.

October, 1985

JOHNSON'S BABY POWDER

Questions and Answers

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**I. TALC - CANCER**

October, 1985

1. Q: Does talc cause cancer?

A: Extensive research in both animals and humans has not shown talc to be carcinogenic nor to have any potential for causing cancer.

2. Q: Dr. Daniel Cramer in the journal Cancer has linked the use of talcum powder to ovarian cancer. Could you comment?

A: Thorough research and testing by the FDA, the medical community and Johnson & Johnson does not support Cramer's hypothesis of such a link. The most recent study in this area contradicts Dr. Cramer's findings. In an October 14, 1983 JAMA letter to the editor, a team of doctors (McGowan et al) from the National Institutes of Health (NIH) and George Washington University in Washington, D.C. conducted research that supports existing studies that show no overall association between talc use and risk of ovarian cancer. Dr. Cramer's study is an epidemiological one, which merely examined factors which might be associated with the disease. The author of the study has himself acknowledged that the evidence is rather tenuous. It does not show a cause and effect relationship. As a retrospective study, it relied on individuals' memories to recall events and habits that took place over a 20-year period.

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3. Q: We know that asbestos causes cancer, do we not?

A: We are not experts on asbestos, but there is strong evidence that very heavy exposure to asbestos fibers can cause cancer, especially in those people that smoke.

4. Q: Haven't they found traces of asbestos in talcum powders?

A: Not in JOHNSON'S Baby Powder. Since the 1940's, when the testing technology first became available, Johnson & Johnson has regularly tested its talc to insure no asbestos contamination. Years ago, before quality controls were in place, some talcum powders could have contained asbestiform particles. Since 1976, however, the FDA has been conducting tests on a regular basis and has declared all talc-based baby powders to be free of such particles. Johnson & Johnson's quality control techniques ensure that JOHNSON'S Baby Powder is made from the purest, safest talc.

5. Q: If your own studies should link talc to ovarian cancer, will you pull Baby Powder off the market?

A: If our tests confirmed a cause and effect relationship, naturally we would remove it. The consumer and the safety of our products are our primary concerns.

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6. Q: Why didn't you find this link in your own testing?

A: This link is a hypothesis and is contradicted by the fact that independent scientists, the FDA as well as Johnson & Johnson have tested the chemical properties of our talc and found no evidence of carcinogenicity.

7. Q: When did you first become aware of the carcinogenic properties of your product?

A: Research shows there are none. Our product, JOHNSON'S Baby Powder has been thoroughly tested. Our research, as well as that of the government and the medical community, confirms its safety.

8. Q: In 1976, scientists found asbestos in 10 of 19 baby powders tested. How is that possible?

A: Prior to 1976, when strict quality control was initiated, some talcum powders contained asbestiform particles, not JOHNSON'S Baby Powder, however. The FDA has since been conducting tests on a regular basis and has declared talc available, Johnson & Johnson has regularly tested its talc to insure that it is not contaminated with asbestos. Johnson & Johnson's talc is a pure, fine grade talc, safe for proper use among infants and adults.

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9. Q: What is the relationship between talc and ovarian cancer?

A: There is no scientific evidence which shows that talc causes any form of cancer. In fact, the weight of extensive scientific evidence shows that talc is safe. As recently as October 14, 1983 in a letter to the editor of JAMA, evidence questioning such a link came to light. In that letter, a team of doctors (McGowan et al) from the National Institutes of Health (NIH) and George Washington University in Washington, D.C. state that their research reveals "no overall association between talc use and risk of ovarian cancer." Time and again research undertaken by the medical community, the government and by Johnson & Johnson confirms the safety of talc.

10. Q: Don't you test for those sorts of things?

A: Yes, we do. Johnson & Johnson is deeply concerned with the safety of its products and is continuously testing them for safety. Extensive research to date reaffirms our confidence in the safety of baby powder.

11. Q: Are you presently conducting tests for this?

A: Yes, Johnson & Johnson sells only talc that is thoroughly tested for safety. We are committed to on-going testing.

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12. Q: What kinds of tests does Johnson & Johnson conduct?

A: First, to ensure the talc is free from other elements or impurities, it is cleansed and tested at the mining site, The testing for purity and safety has been ongoing since the 1940's and includes a specific microscopic examination. This process is repeated during packaging at the factory. The result is the purest, finest grade talc used in JOHNSON 's Baby Powder.

Moreover, over the years, Johnson & Johnson has joined independent researchers, and the government in extensive research which has not shown talc to be a carcinogen.

13. Q: Dr. Cramer's study indicates that women who use talc have three times the risk of contracting ovarian cancer than those who do not use it. As a manufacturer, how do you respond to this?

A: Thorough research and testing by the FDA, the medical community and Johnson & Johnson has not shown talc to be carcinogenic. The most recent study in this area contradicts Dr. Cramer's findings. In an October 14, 1983 JAMA letter to the editor, a team of doctors (McGowan et al) from the National Institutes of Health (NIH) and George Washington University in Washington, D.C. conducted research that supports existing studies showing no overall association between talc use and risk

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of ovarian cancer. Dr. Cramer's study is an epidemiological one, which merely examined factors which might be associated with the disease. The author of the study himself acknowledged that the evidence is rather tenuous. It does not show a cause and effect relationship. As a retrospective study, it depended on individuals' memories to recall events and habits that took place over a 20-year period.

14. Q: Talc is closely related to asbestos. Isn't it likely that the two react in the same way?

A: Talc and asbestos are two chemically distinct minerals which can be found close together in geologic formations. J&J talc source was selected because it is rich in talc and free of asbestos. We own the talc mine which gives us complete control over the quality of talc used in our products. Since 1976 the FDA has been conducting tests on a regular basis and declared talc safe. Furthermore, medical testing shows that talc and asbestos act very differently in human tissues, and has not shown talc to be carcinogenic.

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15. Q: What other studies have been done to determine the validity of this link between talc and cancer?

A: There are no studies confirming such a link. On the contrary, the FDA and many other independent scientists have confirmed that there is no evidence linking pure talc to cancer. JOHNSON'S Baby Powder does not contain asbestos, and we ourselves conduct exhaustive quality testing to assure its purity and safety.

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## **II. TALC - INHALATION**

**October, 1985**

1. Q: How about the allegations that talc can cause granulomas in the lungs?

A: These allegations result from rare reports of unusually large exposures not found in normal use of baby powder.

2. Q: What exactly are granulomas?

A: Talc granulomas are nodules of fibrous or scar tissue.

3. Q: Have studies been done linking disease to the miners of talc?

A: Studies indicate that talc dust exposure to millers of cosmetic grade talc is not injurious to health, whereas miners of industrial talcs may contract lung scarring because of the mixed dusts they are exposed to.

4. Q: Describe the kind of testing Johnson & Johnson has done on the safety of Baby Powder?

A: First, to ensure the talc is free from other elements or impurities, it is cleansed and tested at the mining site. The testing for purity and safety has been ongoing since the 1940's and includes electron microscopic examination. This process is repeated during packaging at the factory. The result is the finest grade talc used to give JOHNSON's Baby Powder its purest protection quality.

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Moreover, Johnson & Johnson, as well as the medical community and the government have been conducting research on talc for over 40 years to reaffirm its safety under various animal, laboratory and human conditions. A study involving the inhalation of exaggerated levels of cosmetic talc during the life of hamsters showed no exposure-related problems. A subsequent inhalation study with hamsters found no translocation of talc to the liver, kidneys, ovaries or other parts of the body. A recent study (Battelle, Pacific Northwest Laboratories, 1984) shows that even massive doses of talc placed in the vaginas of monkeys did not migrate to the ovaries. Johnson & Johnson is committed to ongoing research for its talc products.

5. Q: Isn't it dangerous to inhale talc?

A: Our research has shown that exposure to talc during normal cosmetic use is safe; however inhaling large quantities of any dust or dust-like particles could cause a medical problem.

6. Q: What is "normal" use?

A: By normal use we mean, for instance, powdering after diapering, a shower or bath.

October, 1985

7. Q: Why don't you put labels on your product to warn parents about "abnormal" use of talc?

A: Several years ago the FDA was asked to impose such labeling. At the time we agreed with their decision that warning labels were neither necessary or effective. Today, however, studies show that consumers are more apt to read package labeling. Given this environment, J&J has decided to modify our package label, and are in the process of developing more detailed instructional and cautionary information.

8. Q: You're now test marketing J&J Baby Powder with cornstarch. Why does that product package have a warning label and not Baby Powder with talc, which is more dangerous?

Our research has shown that normal use of cosmetic talc is safe. As you said, J&J Baby Powder with cornstarch is in the test market stage, and does offer instructional and cautionary labeling. We are in the process of developing this kind of labeling for J&J Baby Powder.

October, 1985

9. Q: Don't talc particles stay in your lungs?

A: The air we normally breathe contains alot of dust and our lungs are able to clear themselves very effectively. It takes very heavy exposures to overburden this normal clearing ability. Normal cosmetic use is hundreds of times less than exposure to animals that have not produced any talc-related effects.

10. Q: How long does it take to clear your lungs of talc?

A: Research <sup>in animals</sup> has shown that even with huge exposures, most talc is removed within 8 days, with the remainder being cleared within 3 months.

11. Q: Could talc cause emphysema?

A: Emphysema, a degenerative disease of the lungs caused by breakdown of the normal air sacks, has not been associated with talc under normal cosmetic use conditions.

October, 1985

**III. TALC - TRANSLOCATION**

**October, 1985**

1. Q: Can talc migrate from the external environment into the body?

A: Numerous scientific studies have supported what we have always known as the inherent, biological implausibility of translocation of talc to the liver, kidneys, ovaries, and other parts of the body.

Studies on hamsters found that after massive inhalation of talc, there was no translocation of talc to the liver, kidneys, ovaries or other parts of the body. Studies in rabbits show that talc, placed in the vagina, does not migrate to the ovaries.

And further evidence was provided by a 1984 study (performed by Battelle, Pacific Northwest Laboratories) using monkeys, which shows that talc, placed in the vagina, does not translocate to the oviducts or ovaries.

2. Q: If there is no evidence for translocation of talc, why has it become an issue?

A: Some scientists theorize that talc is able to translocate to parts of the body. The fact is, however, that the weight of scientific evidence falls heavily against this hypothesis.

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3. Q: What studies have been done to disprove translocation of talc?

A: Numerous scientific studies show that talc does not translocate to the ovaries, liver, kidneys, or other parts of the body.

Studies on hamsters found that after massive inhalation of talc, no translocation occurred. Studies in rabbits show that talc, placed in the vagina, does not migrate to the ovaries.

And further evidence was provided in a 1984 study (performed by Battelle, Pacific Northwest Laboratories) using monkeys, which shows that talc, when placed in the vagina, does not translocate to the oviducts or ovaries.

4. Q: But haven't there been studies proving translocation of talc?

A: We are not aware of any studies that proved such a theory. Numerous scientific studies show that talc does not translocate. Most recently, in fact, a study (performed by Battelle, Pacific Northwest Laboratories, 1984) shows that talc, when placed in the vagina, does not translocate to the oviducts or ovaries.

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5. Q: What about the study by Egli & Newton that proved translocation of talc to the ovaries?

A: The 1961 Egli & Newton study, which used carbon black particles, did not prove translocation of talc to the ovaries. Moreover, a study by Battelle, Pacific Northwest Laboratories (1984) followed closely the procedures used in the 1961 study, and found that talc does not translocate to the ovaries -- despite a number of controls added to make translocation easier.

In this study, neutron-activated talc -- as well as the carbon black particles used in the 1961 study -- were deposited in the vaginas of monkeys. Neutron-activated talc is easier to monitor, and reduces the problem of contamination from the environment. Carbon is one of the most common air pollutants, and this could easily account for the carbon particles found in the 1961 study.

6. Q: Explain the process by which talc moves from the outside of the body to the ovaries.

A: This is a hypothesis only, and it is hard to imagine that the body's natural protective mechanisms would permit it. Moreover, the weight of scientific evidence falls heavily against this hypothesis. In fact, a recent study (Battelle, Pacific Northwest Laboratories, 1984) shows that even massive doses of talc placed in the vaginas of monkeys does not migrate to the ovaries.

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7. Q: Does talc cause pelvic inflammatory disease?

A: Talc like any other foreign matter, will be irritating if introduced in unusual quantities into body cavities or tissues. There is no scientific evidence that talc can migrate to those cavities and tissues from normal everyday use of talcum baby powder.

8. Q: What is "normal" use?

A: By normal use we mean, for instance, powdering after diapering, a shower or bath.

9. Q: Describe the kind of testing Johnson & Johnson has done on the safety of baby powder?

A: First, to insure the talc is safe and free from other elements or impurities, it is cleansed and tested at the mining site. The testing process is repeated during packaging at the factory. The result is the purest, finest grade talc used in J&J Baby Powder.

Johnson & Johnson, as well as the medical community and the government have been testing talc for over 40 years to reaffirm its safety in various animal, laboratory and human tests. A study involving the inhalation of exaggerated levels of cosmetic talc during the life of

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hamsters showed exposure-related problems. A subsequent inhalation study with hamsters found no translocation of talc to the liver, kidneys, ovaries or other parts of the body.

A recent study (Battelle, Pacific Northwest Laboratories, 1984) shows that even massive doses of talc placed in the vaginas of monkeys does not migrate to the ovaries.

A survey of 150 people who had talc placed around a lung to stabilize it against recurrent lung collapse showed this talc did not cause any increased cancer even with this severe direct exposure which had taken place 14-42 years previously.

October, 1985

**IV. TALC - MISUSE**

**October, 1985**

1. Q: In Nassau County, in the first six months of 1980, there were 40 cases of babies who ingested or inhaled various baby powders. How serious is this?

A: By any standard this is serious and unfortunate, but these cases represent the misuse of various baby powders which, fortunately, did not have any long-term effects. Large amounts of any small particle entering the nose or mouth can overwhelm the normal defenses and form a physical barrier to breathing. Parents must remember these products are not toys, and must exercise care around infants. In this time period there were more than 4,200 cases of accidental ingestions of various household products. This underscores the need for proper parental supervision of infants and children.

2. Q: How many suffocation deaths have there been?

A: We are not aware of any such deaths over the past 20 years. The deaths recorded in the scientific literature prior to then occurred when the entire contents of a container were accidentally emptied into a baby's mouth, causing actual physical obstruction.

3. Q: Aren't medicated powders even more dangerous?

A: This would depend upon the nature and potential toxicity of the medicating ingredient.

October, 1985

4. Q: Why haven't you changed the shape of your bottle, since it looks like a nurser and babies are prone to suck on it?

A: We have looked into incidents of misuse carefully and have concluded that the shape of the bottle is not the cause of accidents, since babies will tend to put almost anything in their mouths. The problem is in misuse -- parents who give the bottle to infants or leave it within the grasp of infants. We do not feel that changing the shape of our bottle will eliminate the rare incidents of mishandling or of parental negligence. Reports of inhalation due to misuse, though very unfortunate, are rare. With reasonable parental care, inhalation accidents can be prevented.

5. Q: Why are there no safety caps on J&J Baby Powder?

A: To try to prevent misuse, which is really the issue here, we provide extensive information along with our product on its proper usage. The best way to prevent acute, i.e., one-time massive, inhalation by dumping in a baby's mouth is to keep the product out of the reach of babies, as indicated in our proper use information -- advertising, booklets, and packaging.

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6. Q: If accidents are occurring, why aren't you warning parents about accidents in your labeling?

A: Several years ago the FDA was asked to impose such labeling. At the time we agreed with their decision that warning labels were neither necessary or effective. Today, however, studies show that consumers are more apt to read package labeling. Given this environment, J&J has decided to modify our package label, and are in the process of developing more detailed instructional and cautionary information. We have recently introduced J&J Baby Powder with cornstarch in test markets in California, and the product package has this kind of detailed labeling.

7. Q: You're now test marketing J&J Baby Powder with cornstarch. Why does that product package have a warning label and not Baby Powder with talc?

A: As you said, J&J Baby Powder with cornstarch is in the test market stage, and does offer instructional and cautionary labeling. We are in the process of developing this kind of labeling for J&J Baby Powder.

8. Q: Why do you have to caution consumers about these products? Are they unsafe?

A: Of course these products are safe. As a responsible

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company, we feel that any time we can provide consumers with valuable information about the proper use of our products, we should do so. In the current environment where consumers are more apt than ever before to read package labeling, we could provide yet another value-added service to consumers.

October, 1985

**V. BABY POWDER – BENEFITS AND USES**

October, 1985

1. Q: Baby Powder is no longer being used in hospitals. Why not?

A: This is not true of all hospitals. Given the frequency of diaper changing in a hospital -- to help keep the skin dry and prevent diaper rash -- there is less dependence on a drying agent like talc or corn starch.

B: Baby Powder is used in hospitals for general bed care. Nursery use of talc is limited and probably always has been limited because the frequency of diaper changing helps keep the skin dry and prevents diaper rash. There is, therefore, less dependence on a drying agent like talc or corn starch.

2. Q: There's no medical benefit to baby powder, is there?

A: Talc is not presented as having a medical benefit, it is not a drug. Baby powder is a dry lubricant for use after a shower, exercise or a diaper change. The flat platelike talc particles slide easily over one another to provide lubricity. J&J Baby Powder is moisture repellent and has been proven effective in reducing friction and providing cool, dry comfort for nearly 100 years. For infants, the use of baby powder can encourage parental touching and caressing which fulfills documented psychological needs for "touching and bonding."

October, 1985

3. Q: Does baby powder prevent diaper rash?

A: Talc is a dry lubricant and a moisture repellent to be used after a diaper change. Its lubricity has been proven effective in reducing friction and its moisture repellent action helps protect skin from the irritation of wet diapers.

4. Q: The Lancet, a leading British medical journal says:

"There is no reason to believe that normal exposure to talc in the past led to cancer." What constitutes "normal" exposure?

A: Normal exposure is the reasonable, everyday use of baby powder. This means application after a shower, exercise or after a diaper change.

October, 1985

**VI. BABY POWDER - MANUFACTURING**

**October, 1985**

1. Q: Where does talc come from?

A: It is a mineral, occurring naturally in the earth. Talc is from deposits around the world. Johnson & Johnson's own talc mine is located in Vermont.

2. Q: How is it mined?

A: Johnson & Johnson mines only the highest grade talc. It is ground, then "washed" and purged of impurities. It is then transported to the manufacturing plant in specially sanitized containers. Before packaging, again it is tested for impurities. Johnson & Johnson uses the utmost care and responsibility in bringing the highest possible quality baby powder to market.

3. Q: Describe the kind of testing Johnson & Johnson has done on the safety of baby powder?

A: J&J Baby Powder consists of pure talc. To insure the talc is safe and free from other elements or impurities, it is washed and tested at the mining site. The testing for purity and safety has been ongoing since the 1940's and includes a specific microscopic examination. The testing process is repeated during packaging at the factory. The result is the purest, finest grade talc used in J&J Baby Powder.

October, 1985

Moreover, Johnson & Johnson, as well as the medical community and the government have been testing talc for over 40 years to reaffirm its safety under various animal, laboratory and human conditions. A study involving the inhalation of exaggerated levels of cosmetic talc during the life of hamsters showed no exposure related problems. A subsequent inhalation study with hamsters found no translocation of cosmetic talc to the liver, kidneys, ovaries or other parts of the body.

A recent study (Battelle, Pacific Northwest Laboratories, 1984) shows that even massive doses of talc placed in the vaginas of monkeys does not migrate to the ovaries.

A survey of 150 people who had talc placed around a lung to stabilize it against recurrent lung collapse showed this talc did not cause any increased cancer even with this severe direct exposure which had taken place 14-42 years previously.

4. Q: Mineral talc and asbestos are often found in the same mines. What safety controls do you have to maintain purity of product?

A: Johnson & Johnson is one of the few consumer product companies in the U.S. that owns its own talc mine. This allows us to have complete control over the quality of

October, 1985

talc used in our product. The mine was chosen because of the absence of asbestos deposits and the veins from which our talc is mined are specially and carefully selected. This selected high purity talc ore undergoes an extensive cleansing process to remove impurities and scientific analysis and microscopic examination to confirm the absence of asbestos. The process selects the platy form of talc for superior lubricity. The selection process is especially effective in eliminating non-platy shapes. The talc is shipped to our plant in specially sanitized containers to maintain this purity. Before packaging, it is once more scientifically tested to insure this purity.

October, 1985

**VII. BABY POWDER – GENERAL**

**October, 1985**

1. Q: If your wife asked how safe baby powder is for your own baby, what would you tell her?

A: I would tell her that J&J Baby Powder is safe and I would assure her that nearly 100 years of use and extensive scientific evidence supports this. Johnson & Johnson is recognized around the world as an extraordinarily responsible company, concerned first with the safety of our products and the health of the consumer.

2. Q: What's in J&J Baby Powder?

A: J&J Baby Powder contains pure, high grade talc, a naturally occurring mineral, and a very small amount of perfume (the most recognized smell in the world!)

3. Q: Is there any difference between mineral talc and cosmetic dusting powder?

A: Mineral talc is the naturally occurring element; cosmetic dusting powder is a particularly platy grade of mineral talc carefully processed with fragrances added.

4. Q: Is baby powder safe?

A: J&J Baby Powder, nearly 100 years on the market, can be used properly with confidence by consumers. Thorough testing, undertaken by the scientific community, the Food and Drug Administration and by Johnson & Johnson has continuously reaffirmed the safety of baby powder.

October, 1985

**VIII. MEDICATED TALCS**

**October, 1985**

1. Q: Isn't it better to use medicated talc?

A: If the skin is irritated and requires a medicine to help in its treatment, a physician should be consulted, particularly if there is persistent or recurring irritation of the skin.

2. Q: Are there toxic elements in medicated talcs?

A: Medicated talcs contain drugs to treat minor skin irritations. As with all drugs, safety and effectiveness depend on following the directions for its intended use. All talcs, including medicated ones, are for external skin applications only.

October, 1985

**IX. BABY CORNSTARCH**

**October, 1985**

1. Q: Why did you introduce a cornstarch powder?

A: While talc provides a moisture repellent barrier on the skin, Cornstarch absorbs moisture to make skin feel dry. It was found that some consumers preferred it, and we wanted to provide them with a superior cosmetic grade cornstarch.

2. Q: Isn't it because it is safer?

A: Not at all. First, the safety of talcum powder has been continuously re-affirmed by Johnson & Johnson, the medical community and by the government. And, we are always conducting research to ensure its safety. For some consumers who prefer the absorbency effect of cornstarch, we have J&J Baby Cornstarch. For the consumer who prefers more softness and lubricity, there is J&J Baby Powder.

3. Q: What's in J&J Baby Cornstarch?

A: J&J Baby Cornstarch consists of pure cornstarch (99%), tricalcium phosphate, and fragrance. It is the highest quality cornstarch available.

October, 1985

4. Q: What is tricalcium phosphate? What is it used for?

A: It's a very safe food grade material. It is added in small amounts to cornstarch to enable it to flow easily out of the container.

5. Q: When did you introduce your cornstarch product?

A: 1980.

6. Q: Surgeons who used to dust their gloves with talc now use cornstarch. Do they know something we don't?

A: Cornstarch is a biodegradable substance which is better for use in surgical procedures where some of the powder on the surgeon's gloves could be left in the body cavity or tissues.

October, 1985

**X. TEST MARKET -- BABY POWDER WITH CORNSTARCH**

October, 1985

1. Q: What is J&J Baby Powder with cornstarch?

A: J&J Baby Powder with cornstarch is a baby powder for consumers who prefer the absorbency of cornstarch. For the consumer who prefers more softness and lubricity, there is J&J Baby Powder with talc. J&J Baby Powder with cornstarch is the highest quality cornstarch available. It consists of pure cornstarch (99%), tricalcium phosphate, and fragrance.

J&J Baby Powder with cornstarch is currently in the test market stage. It is being test marketed in Los Angeles, San Francisco and Las Vegas. Our intent at this point is to take it national some time in 1986.

2. Q: What is tricalcium phosphate? What is it used for?

A: It's a very safe food grade material. It is added in small amounts to cornstarch to enable it to flow easily out of the container.

3. Q: Why is baby powder cornstarch offered only in a few parts of the country?

A: J&J Baby Powder with cornstarch is currently in the test market stage. It is being test marketed in Los Angeles, San Francisco and Las Vegas. Our intent at this point is to take it national some time in 1986.

October, 1985

4. Q: Why is J&J changing its flagship product to contain cornstarch?

A: We are not changing our flagship product. J&J Baby Powder has been on the market nearly 100 years and it remains the baby powder preferred by consumers. We are expanding the product line to offer consumers a choice. For some consumers who prefer the absorbency of cornstarch, there will be J&J Baby Powder with cornstarch. For the consumer who prefers more softness and lubricity, there is J&J Baby Powder with talc.

5. Q: What's the purpose of changing the name but not the product?

A: It is a marketing decision. Our cornstarch product has proven it is worthy of the name of J&J Baby Powder.

6. Q: Are you putting cornstarch in J&J Baby Powder because you think talc is not safe?

A: The safety of talcum powder continuously has been re-affirmed by Johnson & Johnson, the medical community, and by the government. Consumers who prefer more softness and lubricity will be able to continue to use J&J Baby Powder with talc. For those who prefer the absorbency of cornstarch, there will be J&J Baby Powder with cornstarch.

October, 1985

7. Q: When are you going to discontinue using talc in J&J Baby Powder?

A: We are not changing J&J Baby Powder. We are expanding the product line to offer consumers a choice. For some consumers who prefer the absorbency of cornstarch, there will be J&J Baby Powder with cornstarch. For those who prefer more softness and lubricity, there is J&J Baby Powder with talc.

8. Q: Why is there a warning label on J&J Baby Powder with cornstarch and not on J&J Baby Powder?

A: J&J Baby Powder with cornstarch is in a test market. We are in the process of including similar labelling on J&J Baby Powder.

October, 1985

**XI. JOHNSON & JOHNSON POLICIES AND GENERAL QUESTIONS**

**October, 1985**

1. Q: Why are so many products being tested for safety today?

A: As scientific techniques are becoming more and more advanced, researchers are able to conduct even more rigorous studies on chemicals and products and reaffirm their safety. J&J Baby Powder has been on the market for more than 90 years. It has been examined again and again, and all the evidence continues to say that it's a safe product for normal cosmetic use.

2. Q: How has the Tylenol incident affected Johnson & Johnson Baby Products?

A: The whole country now understands that Tylenol was subject to criminal tampering. It has reaffirmed my faith that Johnson & Johnson will only market the safest product possible and will always keep consumers' interests above all others.

3. Q: If your own studies link talc to ovarian cancer, will you pull your talc products off the market?

A: If such tests prove a cause and effect relationship, yes we would remove our talc products. Johnson & Johnson would never place baby powder users at unacceptable risk. The safety of the consumer is our primary concern.

October, 1985

4. Q: You've had a lot of problems at Johnson & Johnson. How many other products are under investigation?

A: Talc is not under investigation, except to the extent that it like many products, is continually tested for safety. Johnson & Johnson's primary responsibilities are to the consumer and as such we sell only the highest quality baby care products. We also investigate our medical products thoroughly, including post-marketing surveillance after they have FDA approval.

5. Q: Will Johnson & Johnson pull its baby powder from the market if these allegations that baby powder causes ovarian cancer are true?

A: If removal from the market were required to protect the public, yes. The consumer has been and will continue to be our concern, and our actions will reflect this philosophy in all decisions. At Johnson & Johnson, the effectiveness and safety of Baby Powder have been proven for nearly 100 years. As recently as October 14, 1983 in a letter to the editor of JAMA, a team of doctors (McGowan et al) from the National Institutes of Health (NIH) and George Washington University in Washington, D.C. state that their research reveals "no overall association between talc use and ovarian cancer." We at Johnson & Johnson, along with the scientific community

October, 1985

and the government, have vast knowledge and understanding of talc. This extensive research shows that Baby Powder, properly used, is safe.

6. Q: How are you people handling the crisis?

A: There is no crisis involving baby powder. The tremendous body of evidence attesting to the safety of talc remains valid. We would just like to inform consumers that J&J Baby Powder, a product nearly 100 years old, is safe and that we are always conducting research to affirm this. We have always placed the consumer's safety above all else and will continue to do so.

7. Q: When were you first aware of the problems with baby powder?

A: In examining all the research undertaken on baby powder we are not aware of problems with it. Extensive research indicates that baby powder, used properly, is safe. We do see an opportunity to clear up some public misunderstanding about our product and its use so it's a pleasure to talk to you about Johnson's Baby Powder.

C

October, 1985

8. Q: In light of all this controversy, when will you be pulling Baby Powder off the market?

A: The safety and effectiveness of Baby Powder have been proven for nearly 100 years. At Johnson & Johnson, concern for the consumer's safety and health is our priority. As always, we will continue to act accordingly, reflecting this philosophy in all decisions.

9. Q: What other products does Johnson & Johnson Baby Products Division manufacture?

A: Johnson & Johnson has a long history as a leading supplier of quality baby care products. Besides Baby Powder and Cornstarch, we also have Baby Cream, Baby Oil, Baby Lotion and Baby Shampoo. We also sell J&J wash cloths, cotton swabs, gift sets, baby bath, soap, Sundown sun screen, Affinity Shampoo and Johnson & Johnson Child Development Toys.

10. Q: Do you anticipate problems with those products in the future?

A: We have no reason to believe there are problems with any of our products. All are thoroughly tested for safety before they are introduced, and on a continuing basis thereafter. Johnson & Johnson is deeply committed to continuing to provide its customers with the highest quality and safest baby products.

October, 1985

11. Q: Are you conducting any tests right now to reassure your Baby Powder users?

A: To reaffirm the existing and extensive evidence supporting the safety of Baby Powder, Johnson & Johnson conducts tests on an ongoing basis. For instance, since the 1940's, we have been testing our talc to ensure that it is free from other elements or impurities. After a thorough cleansing process at the mine site, Johnson & Johnson talc undergoes a specific microscopic examination. This process is repeated during packaging at the factory. The result is the purest, finest grade talc used in J&J Baby Powder.

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D/00/02

# Exhibit 7

*R. Russell to J. Ashton*  
*to R. Stalker*  
*File*  
**Johnson-Johnson**

201960

New Brunswick, N. J.

November 3, 1964

**Subject:** Pure Food Powdered Corn Starch  
A. E. Staley Manufacturing Company

Mr. W. H. Ashton:

About two weeks ago I discussed with you a proposed visit by representatives of the A. E. Staley Manufacturing Company to this office. It was indicated these representatives wanted to talk about the possibility of substituting corn starch in our Baby Powder to replace all or a portion of the talc. You indicated at that time you would like to have a small sample of the corn starch Staley proposed for our use, and also price information on this starch.

A sample of the Pure Food Powdered Starch is on its way into us, and as soon as received will be sent to you. The current price is \$6.73 per cwt. delivered to New Brunswick in 100 lb. paper bags in carload quantities of 50,000 lbs. minimum.

A. E. Staley Manufacturing Company states their Pure Food Powdered Starch is a fine powdered form of unmodified corn starch. They process it by flash-drying to a bulk density (loose) of 32-33 pounds per cubic foot. It is then densified to approximately 45 pounds per cubic foot. They state this gives them a product of approximately 10% moisture that is free flowing and with less dust than a micro-pulverized product. The particle size specification is 0.05% maximum on a 10XX silk. They claim virtually all of the product will pass through a U.S. 325 mesh screen.

This supplier further points out there are two possible advantages of starch in Baby Powder. One is its ability to hold more than 50% water, and the second the fact that starch can be absorbed into the body, tending not to cause severe granuloma as may be the case with talc.

M. R. Stalker

am

J&J-0161396

JNJ 000331979

# Exhibit 8

# A change for the better

## from Johnson & Johnson



Presentation Brochure "Introducing New Concepts"  
(reclaimin) 1984

P1.00000262.0001

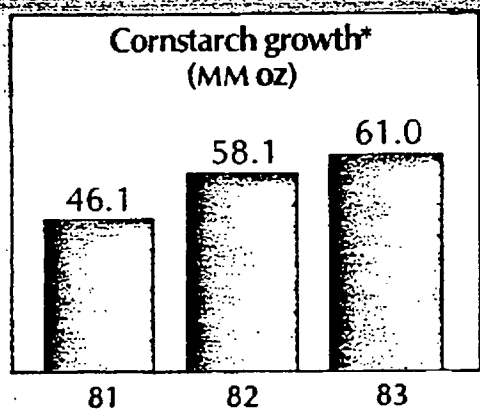
J&J-0161682

JNJ 000332195

# The baby powder market is changing

Cornstarch is being used by more and more mothers in changing their babies' diapers

- About 50% of mothers who use a baby powder on their infants now use a cornstarch baby powder
- The cornstarch segment is the growth segment of the category —up 32% since 1981\*



\*A.C. Nielsen

Johnson's  
baby  
powder

Johnson & Johnson

Johnson's  
baby  
corn  
starch

HELPS PREVENT CHAFING

Johnson & Johnson

# Johnson's baby corn starch is growing

Johnson's baby corn starch  
is the fastest-growing  
cornstarch baby powder

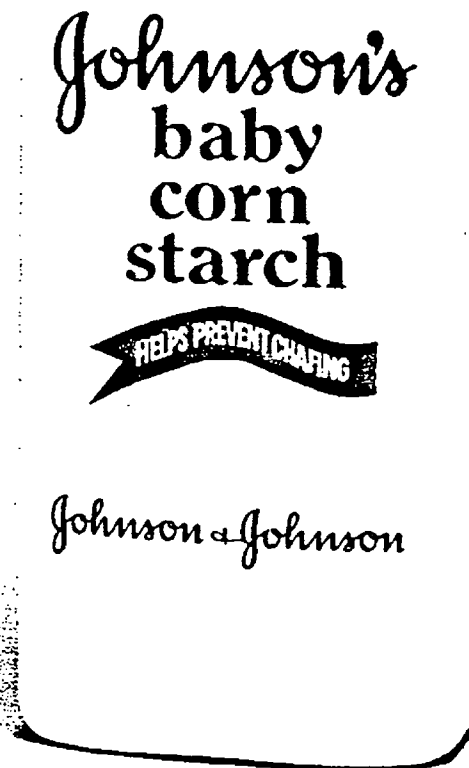
- Up 12% in food outlets\*
- Up 5% in drug stores\*



A. C. Nielsen, 1983

# Johnson's baby corn starch is one of the best ways to help protect baby's skin from irritation due to wetness

- It's 98% pure, natural cornstarch
- It's manufactured to unsurpassed Johnson & Johnson standards
- Only an anti-caking ingredient and a clean, fresh fragrance are added



Now we're changing for the better...

# Mothers want a more absorbent cornstarch



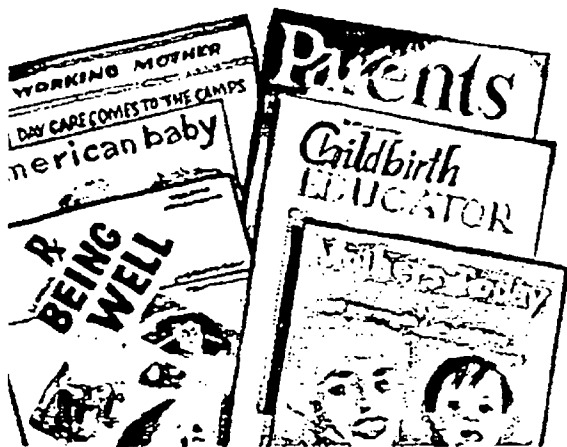
  
**Johnson's**  
baby  
cornstarch

Johnson & Johnson

- Wetness in the diaper area is a big concern because it can promote irritation and chafing
- Johnson & Johnson now has a cornstarch that is 25% more absorbent because it's made with a special cornstarch
- New extra absorbent JOHNSON'S Baby Cornstarch helps keep baby's skin drier

Extra absorbency  
means extra sales  
for you.

## PLUS — Strong new advertising and promotion support



### Full-Page Ads in the magazines mothers read most for baby care information

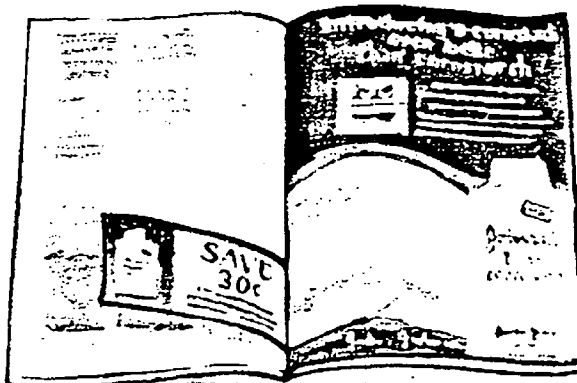
- All top baby magazines plus additional publications to expand coverage
- Reaches 87% of the target market more than 4 times during the second half of 1984

### Targeted, high-visibility coupons to insure that first purchase

2.5 MILLION 30¢ pop-up coupons  
in *Parents* and *American Baby* in July

2.4 MILLION 20¢ pop-up coupons  
in *Johnson & Johnson New  
Parenting Series Magazines*

625 THOUSAND 30¢ direct mail  
coupons to new mothers in  
August, September and October



### Money saving consumer offer at point-of-sale

- \$1.00 mail-in coupon offer in  
peak summer season



# Exhibit 9

1           IN THE UNITED STATES DISTRICT COURT  
2                               -   -   -  
3           IN RE:   JOHNSON &               :   MDL NO.  
4           JOHNSON TALCUM POWDER       :   16-2738 (FLW)  
5           PRODUCTS MARKETING,       :   (LHG)  
6           SALES PRACTICES AND       :  
7           PRODUCTS LIABILITY       :  
8           LITIGATION               :  
9                               :  
10          This Document Relates       :  
11          to:   All Cases               :

12                               IN THE CIRCUIT COURT  
13                               OF THE CITY OF ST. LOUIS  
14                               STATE OF MISSOURI  
15                               -   -   -

16          VICKIE FORREST, et al,       :  
17                               Plaintiffs,       :   CASE NO.  
18                               vs.               :   1522-CC00419-  
19                               :   02  
20                               :   Division 1  
21          JOHNSON & JOHNSON, et       :  
22          al.,                       :  
23                               :  
24          Defendants.               :

25                               -   -   -  
26                               September 27, 2021  
27                               -   -   -

28          Videotaped remote deposition of  
29          JOHN McKEEGAN, taken pursuant to notice,  
30          was held via Zoom Videoconference,  
31          beginning at 10:02 a.m. EST, on the above  
32          date, before Michelle L. Gray, a  
33          Registered Professional Reporter,  
34          Certified Shorthand Reporter, Certified  
35          Realtime Reporter, and Notary Public.

36                               -   -   -  
37                               GOLKOW LITIGATION SERVICES  
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I N D E X

Testimony of: JOHN McKEEGAN

By Mr. Tisi 11, 273

By Ms. Frazier 261

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E X H I B I T S

- - -

NO.	DESCRIPTION	PAGE
P1.446	Memo, 2/4/94 Subject, Talc Symposium Followup JNJ 000022605	116
P1.603	E-mail Thread 12/7/02 Subject, Talc Assessment/Nichols Dezenhall JNJ 000019592-94	166

Page 3

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E X H I B I T S (Cont'd.)

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NO.	DESCRIPTION	PAGE
P1.605	E-mail Thread 9/1/99 Subject, Confidential Article Genital Talc Exposure and Risk of Ovarian Cancer JNJ 000020043-45	19
P1.610	E-mail Thread 12/15/00 Subject, Ken Rothman JNJ 000404480-81	246
P1.626	CTFA Memorandum 10/27/00 Subject, Proposal From Nichols/Dezenhall On Talc PCPC MDL00144426-35	220
P1.637	E-mail Thread 2/13/98 Subject, Talc JNJ 000038708 Statement on Talcum Powder JNJ 000020045	59
P1.640	E-mail Thread 2/4/00 Subject, FYI HealthScout Article JNJ TALC000440752-56	158

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E X H I B I T S (Cont'd.)			- - - DEPOSITION SUPPORT INDEX - - -		
NO.	DESCRIPTION	PAGE	Direction to Witness Not to Answer		
P1.643	E-mail Thread 3/10/00 Subject, Stockholders Meeting Powder Questions JNJ 000404539 Annual Stockholders Meeting Powder Questions JNJ 000020073	68	PAGE LINE PAGE LINE PAGE LINE None.		
P1.645	E-mail Thread 11/28/00 Subject, Talc JNJ 000576337 National Toxicology Program Draft Reaction Statement JNJ 000576338	97	Request for Production of Documents PAGE LINE PAGE LINE PAGE LINE 247 14 259 6		
P1.646	E-mail Thread 12/5/00 Subject, Talc - Not for Further Distribution JNJ 000563635-38	83	Stipulations PAGE LINE PAGE LINE PAGE LINE None.		
P1.647	E-mail Thread 10/11/01 Subject, Expanded Talc Q&A JNJ 000562923-25	86	Questions Marked PAGE LINE PAGE LINE PAGE LINE None.		
P1.655	E-mail Thread 7/1/99 Subject, Talc Review JNJ 000564698-99	31			
Page 7			Page 9		
E X H I B I T S (Cont'd.)			- - - THE VIDEOGRAPHER: We are now on the record. My name is Carolin De La Rosa, the videographer for Golkow Litigation Services. Today's date is September 27, 2021, and the time is 10:02 a.m. This deposition is being held in the matter of In Re talcum powder litigation. The deponent today is John McKeegan. All parties are noted on the stenographic record. Will the court reporter please swear in the witness. - - - ... JOHN McKEEGAN, having been first duly sworn, was examined and testified as follows: - - - MR. TISI: Just a couple of		
NO.	DESCRIPTION	PAGE			
P1.658	E-mail Thread 11/14/00 Subject, Talc Nov 9th JNJ 000404424-29	191			
P1.663	E-mail Thread 11/17/00 Subject, Monday 11/20 Talc Meeting JNJ 00368160-63	176			
P1.665	E-mail Thread 12/4/00 Subject, Talc JNJ 000404553	74			
P1.667	Curriculum Vitae John McKeegan McKeegan-00000001-2	12			
P1.669	FDA's Cosmetics Program 2/16/98 PCPC 0058604-654	133			
P1.670	Talc: Consumer Uses And Health Perspectives JNJ 00039511-15	59			
P2.6	Genital Talc Exposure And Risk of Ovarian Cancer (Cramer)	26			

<p style="text-align: right;">Page 10</p> <p>1 preliminary things before we 2 actually start the deposition. 3 First of all, I do 4 understand that I asked this 5 question, that this was noted -- 6 this is supposed to also be noted 7 in the Missouri cases. 8 I'll be representing the 9 plaintiffs in both the Missouri 10 and the MDL litigation. 11 I understand that there was 12 no notice of deposition in the 13 Missouri cases, but for all 14 intents and purposes, I've never 15 had this before, we will agree 16 that this is a New Jersey -- a 17 Missouri deposition as well. 18 Kat, are you okay with that? 19 MS. FRAZIER: I'm okay with 20 that. 21 MR. TISI: Okay. I don't 22 know what happened with the 23 notice, but I did notice that as 24 well.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Please state your name for 2 the record, sir. 3 A. John McKeegan. 4 Q. And would you go to the 5 Exhibit Tab 75 in the binder we provided 6 you? 7 A. 75, you said? 8 Q. Correct. 9 MR. TISI: You can bring 10 that up as well, Dan. 11 TRIAL TECH: Okay. 12 MR. TISI: I'm sorry, 13 Exhibit 1.667. 14 (Document marked for 15 identification as Exhibit 16 P1.667.) 17 THE WITNESS: Okay. My 18 resumé? 19 BY MR. TISI: 20 Q. Yeah. We're going to ask 21 you to look at P1.667. Is this a copy of 22 your CV, sir? 23 A. Yes. 24 Q. Is this your current CV or</p>
<p style="text-align: right;">Page 11</p> <p>1 Secondly, we provided you 2 with documents ahead of time, as 3 we had agreed to do. There are 4 some documents that either were 5 incomplete, so we've substituted 6 them, that won't be in his binder 7 or some additional documents. And 8 we'll just have to use them on the 9 screen. We did our best effort to 10 try to provide you stuff ahead of 11 time as we had agreed, just so you 12 know that. 13 And you can certainly open 14 your binders as well. Open your 15 documents as well. 16 Okay? With that, may we 17 start the deposition? 18 MS. FRAZIER: John, you okay 19 to start? 20 THE WITNESS: Sure. 21 - - - 22 EXAMINATION 23 - - - 24 BY MR. TISI:</p>	<p style="text-align: right;">Page 13</p> <p>1 resumé? 2 A. Yes. 3 Q. If you go to Page 2, on 4 page -- it indicates between 1997 and 5 2001 you were the manager of corporate 6 communications for Johnson &amp; Johnson; is 7 that correct? 8 A. Yes. 9 Q. Okay. What was role and 10 responsibilities of your job as corporate 11 communications for Johnson &amp; Johnson? 12 A. The main job was to respond 13 to questions that would come into Johnson 14 &amp; Johnson from the media. 15 In terms of areas of 16 responsibility, I was kind of the 17 secondary corporate spokesman working for 18 Jeff Leebaw who was the -- I think at the 19 time that I started he was director of 20 media relations. 21 And I also had a secondary 22 responsibility to answer media questions 23 based on Johnson &amp; Johnson Consumer 24 Products. At least for those products</p>

<p style="text-align: right;">Page 14</p> <p>1 where the operating company did not have 2 its own spokesperson. 3 Q. Okay. And you kind of raise 4 a point that I was going to make later. 5 You work for Johnson &amp; 6 Johnson corporate, correct? 7 A. Correct. 8 Q. Okay. And Johnson &amp; Johnson 9 has several -- Johnson &amp; Johnson is the 10 parent and there are several other 11 companies that are affiliates of Johnson 12 &amp; Johnson, including J&amp;J Consumer 13 Products, correct? 14 MS. FRAZIER: Object to 15 form. 16 THE WITNESS: I don't think 17 that was the name of the operating 18 company. 19 BY MR. TISI: 20 Q. Okay. What was the 21 operating company, if you can recall? 22 MS. FRAZIER: Object to 23 form. 24 THE WITNESS: It was a</p>	<p style="text-align: right;">Page 16</p> <p>1 I'm referring to Johnson &amp; Johnson Baby 2 Powder or Shower to Shower? 3 A. You know, I don't remember 4 if Shower to Shower was one of our 5 products at that time. 6 Q. Okay. But certainly -- 7 A. But, yes, certainly 8 Johnson's Baby Powder. 9 Q. And I think you testified in 10 a prior deposition that you understood 11 that Johnson's Baby Powder was an 12 important legacy product for Johnson &amp; 13 Johnson overall, correct? 14 A. As more of an indicator of 15 responsibility -- I'm sorry, not 16 responsibility. 17 As an indication of the 18 reputation of the company, because it was 19 one of the few companies that had the 20 Johnson &amp; Johnson name on it at that 21 time. I think they've changed things 22 since. 23 So in terms of baby 24 products, they were a legacy brand that</p>
<p style="text-align: right;">Page 15</p> <p>1 Consumer Products companies. I 2 think there were a few underneath 3 the umbrella. 4 BY MR. TISI: 5 Q. Okay. The company that -- 6 okay. Let's move forward. 7 In your capacity for -- as 8 manager for corporate communication for 9 Johnson &amp; Johnson corporate in the late 10 '90s to 2001, did you have occasion to 11 communicate both internally and 12 externally about the safety of talcum 13 powder products manufactured by Johnson &amp; 14 Johnson Consumer? 15 MS. FRAZIER: Object to 16 form. 17 THE WITNESS: I was not on 18 safety, per se. I would be 19 answering media questions about 20 talc as one of my 21 responsibilities. 22 BY MR. TISI: 23 Q. And when we say talcum, talc 24 or talcum powder products, you understand</p>	<p style="text-align: right;">Page 17</p> <p>1 had a great deal to do with the corporate 2 reputation. 3 Q. And you mentioned your boss 4 at Johnson &amp; Johnson corporate was 5 Mr. Leebaw? 6 A. Yes. 7 Q. And do you understand or 8 know or recall that Mr. Leebaw was part 9 of a joint committee with Johnson &amp; 10 Johnson Consumer called the Worldwide 11 Talc Screening Committee? 12 A. I do not. 13 MS. FRAZIER: Object to 14 form. 15 BY MR. TISI: 16 Q. Now, we mentioned you were 17 primarily involved with J&amp;J corporate on 18 behalf of the J&amp;J family of companies. 19 A couple questions about the 20 J&amp;J family, if I could broaden it a 21 little bit. 22 Was there a subsidiary 23 called Johnson &amp; Johnson Consumer, Inc.? 24 MS. FRAZIER: Object to</p>

<p style="text-align: right;">Page 18</p> <p>1 form.</p> <p>2 THE WITNESS: I don't know</p> <p>3 if that was the exact name of the</p> <p>4 operating company. But I do</p> <p>5 remember that, you know, Consumer</p> <p>6 Products did have their own</p> <p>7 operating company.</p> <p>8 BY MR. TISI:</p> <p>9 Q. Okay. And were you actively</p> <p>10 involved with JJCI or Consumer Products</p> <p>11 on a talc committee to assert the</p> <p>12 position with respect to articles that</p> <p>13 might appear in the press or medical</p> <p>14 journals?</p> <p>15 MS. FRAZIER: Object to</p> <p>16 form.</p> <p>17 THE WITNESS: I think I</p> <p>18 was -- I don't remember being on a</p> <p>19 committee at the beginning. I</p> <p>20 think when we got -- when the</p> <p>21 issue was raised about whether</p> <p>22 talc was going to be part of a</p> <p>23 listing by the national toxicology</p> <p>24 program, that I was representing</p>	<p style="text-align: right;">Page 20</p> <p>1 "Genital Talc Exposure and the Risk of</p> <p>2 Ovarian Cancer"?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And in the middle of</p> <p>5 the page, there is an e-mail from Nancy</p> <p>6 Musco. Do you remember Ms. Musco?</p> <p>7 A. No.</p> <p>8 Q. And she indicates with</p> <p>9 respect to an article, it says, "No</p> <p>10 response was prepared by us or the CFTA."</p> <p>11 You know who the CFTA is,</p> <p>12 correct?</p> <p>13 A. C-T-F-A.</p> <p>14 Q. Yes, correct. That's --</p> <p>15 A. It was an association of</p> <p>16 companies that had various consumer</p> <p>17 products, as I recall.</p> <p>18 Q. Okay. And it's in response</p> <p>19 to a 1999 study. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And she indicates that</p> <p>22 within her company that contact be made</p> <p>23 with "John McKeegan, corporate PR, for</p> <p>24 any response to the media. John is</p>
<p style="text-align: right;">Page 19</p> <p>1 what the media questions would be</p> <p>2 to a group on that. I don't</p> <p>3 remember how many times they met</p> <p>4 or anything like that.</p> <p>5 MR. TISI: Actually, Dan,</p> <p>6 would you please take the CV down.</p> <p>7 Thank you.</p> <p>8 BY MR. TISI:</p> <p>9 Q. Would you go to Tab</p> <p>10 Number 13, if I -- if you could,</p> <p>11 Mr. Leebaw (sic).</p> <p>12 And that's Exhibit P1.605.</p> <p>13 (Document marked for</p> <p>14 identification as Exhibit</p> <p>15 P1.605.)</p> <p>16 MR. TISI: And that's</p> <p>17 Exhibit P1.605.</p> <p>18 THE WITNESS: Okay.</p> <p>19 BY MR. TISI:</p> <p>20 Q. Okay. Do you see that this</p> <p>21 is an e-mail string in September of 1999?</p> <p>22 A. I do see the e-mail.</p> <p>23 Q. And it's a -- the subject</p> <p>24 matter is Confidential: Article:</p>	<p style="text-align: right;">Page 21</p> <p>1 actively involved with ... us on the talc</p> <p>2 committee."</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. Okay. Does that help</p> <p>6 refresh your recollection at least as to</p> <p>7 the time frame in which you were on a</p> <p>8 talc committee?</p> <p>9 A. No.</p> <p>10 Q. Okay. And your response</p> <p>11 says, "This is the statement we have been</p> <p>12 using to respond to inquiries based upon</p> <p>13 previous studies. Can someone fax me a</p> <p>14 copy of the study?" And you provide your</p> <p>15 fax.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And attached to this, which</p> <p>19 we'll talk about in a moment, is a -- and</p> <p>20 this is not in your binder, this was one</p> <p>21 of those incomplete documents. But I'll</p> <p>22 bring it up on the screen. It's</p> <p>23 P1.605.3.</p> <p>24 MR. TISI: Could you go to</p>

<p style="text-align: right;">Page 22</p> <p>1 the third page in this document, 2 Dan?</p> <p>3 MS. FRAZIER: Hey, Chris, 4 just so that we don't get confused 5 with exhibits, is this -- is 6 Tab 13 Exhibit Number 2 for you?</p> <p>7 MR. TISI: No. It's 605.3.</p> <p>8 MS. FRAZIER: So, I know. 9 But in terms of --</p> <p>10 TRIAL TECH: I'll change the 11 marking to match the P number.</p> <p>12 MS. FRAZIER: Okay. Okay. 13 That -- that's going to be tricky 14 for me, but that's okay. I'll 15 figure it out.</p> <p>16 MR. TISI: Okay. I'm sorry. 17 I will try to use -- we were 18 trying -- we're trying, Kat, and 19 just kind of take a quick break 20 here. We're trying to use a 21 common set of exhibits across 22 depositions, and so we're using --</p> <p>23 THE VIDEOGRAPHER: I'm sorry 24 to interrupt, Counselor, would you</p>	<p style="text-align: right;">Page 24</p> <p>1 response to inquiries based on previous 2 studies."</p> <p>3 And then you asked that 4 somebody fax you a copy of the study 5 entitled "Genital Talc Exposure and Risk 6 of Ovarian Cancer." 7 Is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And attached on 10 Page 3 is a statement that you have been 11 using on talcum powder. 12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And is this the 15 statement that corporate, J&amp;J corporate 16 PR had been using to respond to media 17 inquiries and other inquiries relating to 18 talcum powder during the time of this 19 e-mail?</p> <p>20 MS. FRAZIER: Object to 21 form.</p> <p>22 THE WITNESS: I couldn't say 23 with any specificity whether this 24 is what we were using at the time</p>
<p style="text-align: right;">Page 23</p> <p>1 like to go off the record?</p> <p>2 MR. TISI: Sure.</p> <p>3 THE VIDEOGRAPHER: Okay. 4 The time is 10:14 a.m. Off the 5 record. 6 (Short break.)</p> <p>7 THE VIDEOGRAPHER: The time 8 is 10:16 a.m., on the record.</p> <p>9 BY MR. TISI: 10 Q. Okay. Mr. McKeegan, we had 11 a little housekeeping thing to take care 12 of over the break. But let me see if I 13 can reorient us if I could.</p> <p>14 MR. TISI: Dan, would you 15 please bring up Exhibit 605 from 16 his Binder Tab 13 again. And if 17 you go to Page 1.</p> <p>18 BY MR. TISI: 19 Q. Mr. McKeegan, at the very 20 top of this e-mail from September 1st, 21 1999, entitled Confidential: Article: 22 "Genital Talc Exposure and Risk of 23 Ovarian Cancer," you state that "This is 24 a statement we have been using in</p>	<p style="text-align: right;">Page 25</p> <p>1 of this e-mail. But it looks to 2 be consistent with the statements 3 that we may have been using.</p> <p>4 BY MR. TISI: 5 Q. Okay. Well, it indicates, 6 if you look at your e-mail, it indicates 7 that attached is the statement that you 8 have been using.</p> <p>9 So I mean, would you have 10 been correct when you wrote that?</p> <p>11 A. Like I said, I don't have 12 any ideas since we don't have file 13 Talcl197.doc to say that this is at the 14 top. But this looks like it's consistent 15 with statements that we would have been 16 making around that time.</p> <p>17 Q. Okay. Okay. And the second 18 thing that you say is somebody asked -- 19 you asked that somebody fax you a copy of 20 the study, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And do you have any reason 23 to believe that you would not have been 24 faxed a copy of the study that was the</p>

<p style="text-align: right;">Page 26</p> <p>1 subject of this e-mail?</p> <p>2 A. No.</p> <p>3 MS. FRAZIER: Object to</p> <p>4 form.</p> <p>5 MR. TISI: For the record,</p> <p>6 I'm going to attach Exhibit</p> <p>7 P-20 -- P2.6. If you would bring</p> <p>8 that up.</p> <p>9 (Document marked for</p> <p>10 identification as Exhibit</p> <p>11 P2.6.)</p> <p>12 BY MR. TISI:</p> <p>13 Q. And that's not in your</p> <p>14 binder.</p> <p>15 MR. TISI: Would you bring</p> <p>16 that up, Dan?</p> <p>17 No, not that one, please.</p> <p>18 It's P2.6.</p> <p>19 BY MR. TISI:</p> <p>20 Q. Now, Mr. McKeegan, as you</p> <p>21 will see here, this is a 1999 article</p> <p>22 entitled Genital Talc Exposure and Risk</p> <p>23 of Ovarian Cancer. Do you see that?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 relationship is weak but improved by</p> <p>2 considering factors such as closure of</p> <p>3 the female tract, ovulation and exposure</p> <p>4 prior to pregnancy, and we have outlined</p> <p>5 a possible biologic rationale for this</p> <p>6 association. We estimate that avoidance</p> <p>7 of talc in genital hygiene might reduce</p> <p>8 the occurrence of highly lethal form of</p> <p>9 cancer by at least 10 percent. Balanced</p> <p>10 against what are primarily aesthetic</p> <p>11 reasons for using talc in genital</p> <p>12 hygiene, the risk/benefit is not complex.</p> <p>13 Appropriate warnings should be provided</p> <p>14 to women about the potential of regular</p> <p>15 use of talc in the genital area.</p> <p>16 Did I read that correctly?</p> <p>17 A. No.</p> <p>18 Q. Okay. How was it incorrect?</p> <p>19 A. In the second sentence,</p> <p>20 dose-response relationship sentence, you</p> <p>21 did not use the word "have outlined a</p> <p>22 plausible biologic rationale." You</p> <p>23 missed the word "plausible."</p> <p>24 Q. Okay. Fair. I wanted to</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Okay. And this matches the</p> <p>2 subject matter of the e-mail we just</p> <p>3 looked at?</p> <p>4 A. Yes.</p> <p>5 Q. And if you would go to the</p> <p>6 back of the article on page -- if you ask</p> <p>7 for an article and it is sent to you,</p> <p>8 would you -- can we agree that you likely</p> <p>9 would have read it?</p> <p>10 MS. FRAZIER: Object to</p> <p>11 form.</p> <p>12 THE WITNESS: Yes. Yes.</p> <p>13 BY MR. TISI:</p> <p>14 Q. In the back of the article</p> <p>15 on page -- Page 6 of the article, which</p> <p>16 we'll bring up on the screen. And this</p> <p>17 would have been in 1999.</p> <p>18 MR. TISI: Would you blow up</p> <p>19 the last paragraph, please, Dan.</p> <p>20 BY MR. TISI:</p> <p>21 Q. It says, We have</p> <p>22 demonstrated a consistent that appears</p> <p>23 unlikely to be explained by recall and</p> <p>24 confounding. The dose-response</p>	<p style="text-align: right;">Page 29</p> <p>1 focus on the last sentence for a moment.</p> <p>2 "Appropriate warnings should</p> <p>3 be provided to women about the potential</p> <p>4 risks of regular use of talc in the</p> <p>5 genital area?"</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. That was something that you</p> <p>9 understood was being discussed at</p> <p>10 about -- in 1999, correct?</p> <p>11 MS. FRAZIER: Object to</p> <p>12 form.</p> <p>13 THE WITNESS: I don't</p> <p>14 actually get that from the e-mail</p> <p>15 string that you sent me. So I</p> <p>16 can't answer that.</p> <p>17 BY MR. TISI:</p> <p>18 Q. Okay. Is this -- since this</p> <p>19 was in the published medical literature,</p> <p>20 can we agree that the question about</p> <p>21 whether or not appropriate warnings</p> <p>22 should be on the talcum powder products</p> <p>23 was something that was at least in the</p> <p>24 public domain at that time?</p>

Page 30

1 MS. FRAZIER: Object to  
2 form. Foundation.  
3 THE WITNESS: That would  
4 have been outside my area of  
5 expertise. I would have been  
6 dealing with questions from the  
7 media.  
8 BY MR. TISI:  
9 Q. All right. But you agree  
10 that this article likely would have been  
11 sent to you since you requested it,  
12 correct?  
13 A. Yes.  
14 MS. FRAZIER: Object to  
15 form.  
16 BY MR. TISI:  
17 Q. Now, at the time you were  
18 with J&J corporate communications in the  
19 late 1990s, you also attended meetings  
20 where the questions about talc and  
21 ovarian cancer were raised and the  
22 questions of warnings were discussed.  
23 Do you remember that?  
24 A. No.

Page 31

1 MS. FRAZIER: Object to  
2 form.  
3 MR. TISI: Would you go to  
4 Exhibit Number P1.655.  
5 (Document marked for  
6 identification as Exhibit  
7 P1.655.)  
8 MS. FRAZIER: Is that a tab,  
9 Chris?  
10 MR. TISI: I'm about ready  
11 to give it to you. That is Tab  
12 Number 63.  
13 BY MR. TISI:  
14 Q. This is an e-mail from  
15 Ms. Musco to, among other people, you.  
16 Do you see that?  
17 A. Yes.  
18 Q. Okay. And it says,  
19 "Attached please find minutes from the  
20 talc review held in June of 1999. Please  
21 call with any questions."  
22 A. Yes.  
23 Q. And do you see that there's  
24 actually a memo attached?

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1 A. Yes.  
2 Q. And the memo says, "A  
3 meeting was held on June 29, 1999."  
4 Do you see that?  
5 A. Yes.  
6 Q. Okay. And you were actually  
7 listed in this document, correct?  
8 A. Yes.  
9 Q. Okay. John McKeegan, you  
10 are the third person listed there?  
11 A. I am the fourth person  
12 listed there.  
13 Q. Oh, okay. Correct.  
14 And the meeting was held in  
15 1999 to review the history of talc and  
16 publicity circulated about talc and  
17 Johnson's Baby Powder. Do you see that?  
18 A. Yes.  
19 Q. And it says that  
20 "Representatives of medical, regulatory,  
21 toxicology, marketing, packaging, and  
22 public relations and legal presented  
23 information and data."  
24 Do you see that?

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1 A. Yes.  
2 Q. Okay. And it further says,  
3 "The controversial issues raised in the  
4 media are identified as allegations of  
5 inhalation disease and ovarian cancer.  
6 There are many sources alleging these  
7 disease processes from the use of talc,  
8 as well as many sources refuting these  
9 allegations."  
10 Do you see that?  
11 A. Yes.  
12 Q. Okay. And it uses the word  
13 "controversial issues." Did you  
14 understand -- does this indicate to you  
15 that there was discussion at meetings in  
16 which you attended about the controversy  
17 surrounding talc and ovarian cancer?  
18 MS. FRAZIER: Object to  
19 form.  
20 THE WITNESS: I actually  
21 have no memory of the content of  
22 these meetings.  
23 BY MR. TISI:  
24 Q. Okay. I understand that

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1 sitting here in 2021, that you may not  
2 have precise memory of the contents of  
3 these meetings, but this appears -- do  
4 you have any reason to believe that you  
5 were not informed of a controversy  
6 surrounding talc and ovarian cancer since  
7 your name is on this document?  
8 MS. FRAZIER: Object to  
9 form.  
10 THE WITNESS: According to  
11 this memo, these are the things  
12 that would have been discussed.  
13 BY MR. TISI:  
14 Q. Okay. And one of the things  
15 that was discussed was the controversial  
16 issues raised about ovarian cancer and  
17 talc, correct?  
18 MS. FRAZIER: Object to  
19 form.  
20 THE WITNESS: That looks to  
21 be correct.  
22 BY MR. TISI:  
23 Q. Okay. And the next  
24 paragraph says, "We discussed the impact

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1 of issues on professional marketing."  
2 And it says, "Healthcare providers  
3 caution against the use of these  
4 products."  
5 Do you see that?  
6 A. Yes.  
7 Q. Okay. Now, remember before  
8 I asked you whether or not there was  
9 any -- any questions being raised about  
10 whether or not caution or warnings should  
11 be provided. And I showed you Cramer  
12 article from 1999.  
13 Do you remember that?  
14 A. Yes.  
15 Q. So this -- in this document,  
16 this meeting, would you agree with me  
17 that at least the issue was raised as to  
18 whether or not healthcare providers would  
19 provide a caution against the use of talc  
20 products?  
21 A. I have no memory of this  
22 meeting --  
23 MS. FRAZIER: Object to  
24 form. Misstates the document.

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1 Wait a minute, John. Let  
2 me --  
3 THE WITNESS: Sure.  
4 MS. FRAZIER: -- let me  
5 object real quick.  
6 Object to form. Misstates  
7 the document.  
8 MR. TISI: I think, Kat,  
9 your objections really are limited  
10 to form, and we have been --  
11 MS. FRAZIER: Not in  
12 Missouri.  
13 Wait a minute, Chris. Not  
14 in Missouri.  
15 MR. TISI: Wait, wait, wait,  
16 wait. Let me finish.  
17 I think including in  
18 depositions that were  
19 cross-noticed in Missouri with  
20 experts, the question of how we  
21 object was squarely decided by  
22 Judge Schneider and we have all  
23 been adhering to that.  
24 Are you telling me it

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1 doesn't apply to depositions that  
2 are cross-noticed? Because I  
3 understood that was the case.  
4 MS. FRAZIER: Well, first of  
5 all, the expert depositions are  
6 taking place only in the MDL, as I  
7 understand it --  
8 MR. TISI: They are not.  
9 MS. FRAZIER: Okay. Well --  
10 MR. TISI: They are not.  
11 They are cross-noticed.  
12 MS. FRAZIER: Okay. Well,  
13 then it would be related to, you  
14 know, that expert. This is a fact  
15 witness who has been noticed in  
16 the -- in a state court case, and  
17 so I don't want to waive any  
18 objections by not giving a full  
19 basis.  
20 MR. TISI: You're not. I  
21 will tell you as -- and we can  
22 certainly get Judge Schneider on  
23 the phone because he has been  
24 overseeing this for both the MDL

<p style="text-align: right;">Page 38</p> <p>1 and for Missouri.</p> <p>2 I'm quite certain he will</p> <p>3 instruct you to object only as to</p> <p>4 form and that would encompass all</p> <p>5 of the other objections that we're</p> <p>6 making here.</p> <p>7 If you want to do that, we</p> <p>8 can even do it by agreement or we</p> <p>9 can take a break and call Judge</p> <p>10 Schneider.</p> <p>11 MS. FRAZIER: Let's take a</p> <p>12 break and I want to talk to Susan</p> <p>13 Sharko and we'll see about talking</p> <p>14 to Judge Schneider.</p> <p>15 MR. TISI: Mm-hmm.</p> <p>16 THE VIDEOGRAPHER: The time</p> <p>17 is 10:29 a.m. Off the record.</p> <p>18 (Short break.)</p> <p>19 THE VIDEOGRAPHER: The time</p> <p>20 is 10:40 a.m.</p> <p>21 MS. FRAZIER: Okay. So</p> <p>22 we're -- okay. So we're back on</p> <p>23 the record after a brief</p> <p>24 discussion about objections.</p>	<p style="text-align: right;">Page 40</p> <p>1 So I will agree that all of</p> <p>2 your objections are preserved if</p> <p>3 you simply say objection to form.</p> <p>4 MS. FRAZIER: All right.</p> <p>5 MR. TISI: All right. So</p> <p>6 let's see if we can go back on and</p> <p>7 start questioning and see if we</p> <p>8 can get moving through this</p> <p>9 deposition.</p> <p>10 Go ahead.</p> <p>11 BY MR. TISI:</p> <p>12 Q. Mr. McKeegan, we were</p> <p>13 talking about Exhibit 552 which is Tab</p> <p>14 Number 63 in your notebook, Page 2, which</p> <p>15 is the memo from the June 29, 1999</p> <p>16 meeting.</p> <p>17 And just to recap, since</p> <p>18 there was a break between our prior</p> <p>19 discussion and this question, this</p> <p>20 meeting discussed controversial issues</p> <p>21 regarding, among other things, talc and</p> <p>22 ovarian cancer, correct?</p> <p>23 A. That is very close to what</p> <p>24 the memo says.</p>
<p style="text-align: right;">Page 39</p> <p>1 And I want to note on the</p> <p>2 record that this is a deposition</p> <p>3 that was noticed in a Missouri</p> <p>4 case, that being Forrest/Giese,</p> <p>5 and was cross-noticed in the MDL.</p> <p>6 Under Missouri law, if you</p> <p>7 don't state the basis for your</p> <p>8 objections, they are waived.</p> <p>9 And so having spoken with</p> <p>10 Mr. Tisi, he is in agreement that</p> <p>11 my objections are preserved going</p> <p>12 forward in this deposition as long</p> <p>13 as I object to form only and that</p> <p>14 I won't be waiving anything</p> <p>15 otherwise.</p> <p>16 Chris, are you in agreement?</p> <p>17 MR. TISI: I agree</p> <p>18 100 percent. In fact, that's how</p> <p>19 I think we've been instructed to</p> <p>20 proceed in depositions that have</p> <p>21 been cross-noticed in both</p> <p>22 Missouri and in federal court.</p> <p>23 And I think it makes things</p> <p>24 go a lot quicker.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. And this was a meeting where</p> <p>2 it indicates you were at, correct?</p> <p>3 A. I was actually looking for</p> <p>4 that. It doesn't say I was there.</p> <p>5 Q. Okay.</p> <p>6 A. It doesn't say who was</p> <p>7 there.</p> <p>8 It says who the memo was</p> <p>9 sent to.</p> <p>10 Q. Well, it says</p> <p>11 representatives from medical, regulatory</p> <p>12 toxicology, marketing, packaging, and</p> <p>13 public relations --</p> <p>14 A. Yeah.</p> <p>15 Q. -- were there. And you were</p> <p>16 with public relations, correct?</p> <p>17 A. That is true.</p> <p>18 Q. Okay. Now, the other</p> <p>19 thing -- and you were certainly provided</p> <p>20 with a copy of this as well, correct; you</p> <p>21 saw the cover e-mail?</p> <p>22 A. That is correct.</p> <p>23 Q. Okay. As part of this, it</p> <p>24 indicates not only there was a</p>

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1 controversy about ovarian cancer, but it  
2 indicates that "marketing informed us  
3 that adult women is the big user of talc  
4 products and that J&J is the largest  
5 manufacturer of talc products."  
6 Do you see that?  
7 A. Yes.  
8 Q. And do you have any reason  
9 to disbelieve that?  
10 A. I would have no  
11 information --  
12 MS. FRAZIER: Object to  
13 form.  
14 THE WITNESS: I'm sorry.  
15 I would have no information  
16 about that at all.  
17 BY MR. TISI:  
18 Q. And this provides -- this  
19 also provides notice that there was a  
20 discussion about the impact of the issues  
21 on professional marketing. Do you see  
22 that?  
23 A. Yes.  
24 Q. And it also indicates, there

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1 is a statement here, "Healthcare  
2 providers caution against the use of talc  
3 products," correct?  
4 A. Yes.  
5 Q. And previously we looked at  
6 the statement in the 1999 article where  
7 Dr. Cramer and his colleagues at Harvard  
8 indicated that women should be warned  
9 against the use of talc products as well,  
10 correct?  
11 MS. FRAZIER: Object to  
12 form.  
13 THE WITNESS: We did see the  
14 memo from, yeah, from that study.  
15 BY MR. TISI:  
16 Q. And you would agree with me,  
17 and since both of those -- both of these  
18 documents are in 1999, the question about  
19 whether or not talc is implicated in  
20 ovarian cancer and whether or not women  
21 should be warned against using the  
22 product were at least on the radar screen  
23 based upon these two documents, correct?  
24 MS. FRAZIER: Object to

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1 form.  
2 THE WITNESS: I would agree  
3 with that.  
4 BY MR. TISI:  
5 Q. Okay. Now, you know that I  
6 represent women -- and I didn't get a  
7 chance to truly introduce myself. You  
8 know that I represent women who claim  
9 that J&J failed to take steps for decades  
10 that would prevent exposure to talc which  
11 they claim cause ovarian cancer.  
12 Do you understand that?  
13 MS. FRAZIER: Object to  
14 form.  
15 BY MR. TISI:  
16 Q. Do you understand that, sir?  
17 A. Yes.  
18 Q. And do you understand that  
19 ovarian cancer is a serious and deadly  
20 disease?  
21 MS. FRAZIER: Object to  
22 form.  
23 THE WITNESS: Yes.  
24 BY MR. TISI:

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1 Q. And it's something you  
2 understood while you were working for J&J  
3 in the '90s and 2000s, correct?  
4 MS. FRAZIER: Object to  
5 form.  
6 THE WITNESS: I would agree  
7 that -- that it was a serious  
8 disease, but my role had nothing  
9 to do with -- with medicine.  
10 My role was strictly to deal  
11 with questions from media.  
12 MR. TISI: Understood. And  
13 move to strike as being  
14 nonresponsive.  
15 BY MR. TISI:  
16 Q. You understood in the 2000s  
17 when you were speaking to the media that  
18 ovarian cancer is a serious disease,  
19 correct?  
20 MS. FRAZIER: Object to  
21 form.  
22 THE WITNESS: Yes.  
23 MS. FRAZIER: Foundation.  
24 BY MR. TISI:

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1 Q. Okay. And you also  
2 understood, since you were speaking to  
3 the media on issues relating to talc and  
4 ovarian cancer, that Johnson's Baby  
5 Powder is a cosmetic and not a medicine,  
6 correct?

7 MS. FRAZIER: Object to  
8 form. Foundation.

9 THE WITNESS: I don't  
10 understand the question actually.

11 BY MR. TISI:

12 Q. Okay. Do you understand  
13 that you don't need a prescription from a  
14 doctor to get Johnson's Baby Powder?

15 A. Yes.

16 Q. Okay. And you understand  
17 anybody can go into any drugstore, at  
18 least at the time, can go in any  
19 drugstore or Kmart or Walmart and buy  
20 Johnson's Baby Powder?

21 A. Yes.

22 Q. Okay. Now, before I ask you  
23 questions about your involvement with the  
24 issues, let me ask you a couple of

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1 questions about how you and I got to this  
2 deposition. You are not here  
3 voluntarily, are you?

4 A. No.

5 Q. And we had to subpoena you  
6 to come for deposition, correct?

7 A. Correct.

8 Q. And you fought the subpoena  
9 in front of a judge in New Jersey, you're  
10 aware of that, correct?

11 A. Well, my attorneys --

12 MS. FRAZIER: Object to  
13 form.

14 THE WITNESS: -- would have  
15 done that.

16 BY MR. TISI:

17 Q. Correct.

18 And although you don't  
19 currently work for J&J, J&J's lawyers are  
20 representing you in this deposition  
21 today, correct?

22 A. Correct.

23 Q. And you understand that the  
24 testimony that you are giving today is

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1 being recorded and it may be shown to a  
2 judge and jury, correct?

3 A. Yes.

4 Q. And you understand that you  
5 have an obligation, being under oath, to  
6 answer my questions to the best of your  
7 ability, correct?

8 A. Yes.

9 Q. And you have an  
10 understanding that it is not -- it is not  
11 appropriate to try to avoid answering  
12 questions, true?

13 MS. FRAZIER: Object to  
14 form.

15 THE WITNESS: I'm not sure  
16 what you're asking.

17 BY MR. TISI:

18 Q. Well, you understand that  
19 even if you don't have a precise  
20 recollection, as good a recollection as  
21 you have, you have an obligation to  
22 provide me with information if I ask you  
23 a question, true?

24 A. With the best information

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1 that I have --

2 MS. FRAZIER: Object to  
3 form.

4 BY MR. TISI:

5 Q. Correct. And you were  
6 deposed before by another lawyer who  
7 represented people who claimed they had  
8 lung disease from talc and asbestos. Do  
9 you recall that?

10 A. Yes.

11 Q. Okay. And have you re-read  
12 that deposition in preparation for your  
13 testimony here today?

14 A. Yes.

15 Q. You recall that you were  
16 shown a lot of documents in that  
17 deposition but testified that you could  
18 not remember many of the things that were  
19 being asked of you?

20 A. That is correct.

21 MS. FRAZIER: Object to  
22 form.

23 Wait a second, John, let --  
24 pause for just a minute and let me

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1 object before you answer. Thanks.  
 2 BY MR. TISI:  
 3 Q. Between July and today, and  
 4 we are in late September, did you do  
 5 anything to try and refresh your  
 6 recollection on the issues relating to  
 7 talc and ovarian cancer so that you could  
 8 try and give full and complete answers to  
 9 my questions here today?  
 10 MS. FRAZIER: Object to  
 11 form.  
 12 THE WITNESS: Besides  
 13 discussion with Kat Frazier and  
 14 another attorney about the --  
 15 about this deposition --  
 16 MS. FRAZIER: Wait a minute,  
 17 wait, wait, wait, John. Okay. Go  
 18 ahead.  
 19 Wait a second. Let me just  
 20 remind Mr. McKeegan not to  
 21 disclose any substance of any  
 22 communications we would have had,  
 23 but other than that, that's okay.  
 24 BY MR. TISI:

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1 Q. Did you -- and I'm not  
 2 asking any discussions you may have had,  
 3 but did you actually review documents  
 4 before today's deposition?  
 5 A. No.  
 6 Q. All right. Let's talk  
 7 first -- the first thing that I would  
 8 like to talk to you about Mr. McKeegan  
 9 are the corporate statements and messages  
 10 that were sent out to the public or to  
 11 the media or to other groups to defend  
 12 talc products in the 1990s. Okay?  
 13 MS. FRAZIER: Object to  
 14 form.  
 15 THE WITNESS: Okay.  
 16 BY MR. TISI:  
 17 Q. Okay. All right. I would  
 18 ask that --  
 19 MR. TISI: Dan, bring up  
 20 Exhibit 1.605 which is Tab 13 of  
 21 your binder. And I believe this  
 22 is the e-mail we discussed earlier  
 23 with the attached statement.  
 24 BY MR. TISI:

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1 Q. Do you see that?  
 2 And if you would go to the  
 3 attached statement which you indicated  
 4 was consistent with the statements that  
 5 you recall sending out at that time.  
 6 Could you take a look at  
 7 that, please?  
 8 Would you please read it?  
 9 A. "Johnson's Baby Powder has  
 10 been used safely for more than 100 years.  
 11 It contains pure, high-grade cosmetic  
 12 talc that is free of impurities and is  
 13 not carcinogenic. A number of studies to  
 14 investigate a possible association  
 15 between talc use and ovarian tumors were  
 16 reviewed in 1994 at a workshop sponsored  
 17 by the FDA. The workshop concluded no  
 18 hazards to health had been demonstrated  
 19 in connection with the normal use of  
 20 cosmetic talc. We continue to review new  
 21 research that is in the public domain."  
 22 Q. And this is the statement  
 23 that you recall and the message you  
 24 recall giving to the press at about that

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1 time in the late '90s, 2000 time frame  
 2 with respect to talc and ovarian cancer,  
 3 true?  
 4 A. Like I had said before, this  
 5 is consistent with what I remember that  
 6 we would have told to the media at that  
 7 time. But I don't know if there was, you  
 8 know, specific statements that we made  
 9 that included answers to specific  
 10 questions or something like that.  
 11 Q. Okay. And it specifically  
 12 refers to a 1994 workshop co-sponsored by  
 13 the FDA. Do you see that?  
 14 A. Yes.  
 15 Q. And you specifically -- the  
 16 statement that was being provided for  
 17 discussions with the press specifically  
 18 focused on the FDA. True?  
 19 MS. FRAZIER: Object to  
 20 form.  
 21 THE WITNESS: That is --  
 22 that is what this statement says.  
 23 BY MR. TISI:  
 24 Q. Okay. And this statement --

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1 and the purpose for including the FDA,  
2 would you agree with me, is to assure the  
3 public that the FDA had also concluded  
4 that talc was safe?  
5 MS. FRAZIER: Object to  
6 form.  
7 BY MR. TISI:  
8 Q. That was the implication,  
9 true?  
10 MS. FRAZIER: Object to  
11 form.  
12 THE WITNESS: I don't recall  
13 why that was put in here.  
14 Certainly 1994 workshop was before  
15 my time.  
16 BY MR. TISI:  
17 Q. Okay. But including it in a  
18 statement to the press and in responding  
19 to the press, you were responsible as a  
20 spokesperson for understanding the  
21 statements that you were giving, true?  
22 MS. FRAZIER: Object to  
23 form.  
24 THE WITNESS: I -- like I

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1 said, I have no memory of this  
2 1994 workshop or why it would have  
3 been included in here.  
4 BY MR. TISI:  
5 Q. I understand. My question  
6 is more broad than that.  
7 Why would this statement  
8 contain information, we agreed before in  
9 response to one of my questions, the  
10 purpose for including the FDA is to give  
11 some credibility to the assertion that  
12 there is no risk associated with talc and  
13 ovarian cancer. True?  
14 MS. FRAZIER: Object to  
15 form.  
16 THE WITNESS: Like I said, I  
17 don't know why this would have  
18 been included in this statement.  
19 This workshop was going to be  
20 before my time at Johnson &  
21 Johnson.  
22 BY MR. TISI:  
23 Q. Right. But this statement  
24 was in 1999. It was supposed to be given

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1 by you, and, in fact, you produced it in  
2 response to an e-mail by -- by Ms. Musco,  
3 correct?  
4 MS. FRAZIER: Objection to  
5 form.  
6 THE WITNESS: I did provide,  
7 according to these e-mails and  
8 your statement that this is what  
9 was attached, that this is what I  
10 would have provided to Ms. Musco.  
11 BY MR. TISI:  
12 Q. Right. And in addition to  
13 that, and then we're going to see, this  
14 statement is repeated over and over and  
15 over again. But this would have been the  
16 statement that would have been provided  
17 by J&J corporate to any of the media  
18 that -- that requested information on  
19 talc, right?  
20 MS. FRAZIER: Objection to  
21 form.  
22 THE WITNESS: I don't recall  
23 if these statements changed over  
24 time during this period that I was

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1 there. But this would have been  
2 consistent.  
3 BY MR. TISI:  
4 Q. We're going to look at that.  
5 We're going to look at that.  
6 But my question more broadly  
7 is, even though the 1994 workshop  
8 happened before your time, this is a  
9 statement that was consistent with  
10 statements that were provided to the  
11 media, or anybody that would make an  
12 inquiry, to public -- corporate public  
13 relations for Johnson & Johnson in 1999.  
14 True?  
15 MS. FRAZIER: Object to  
16 form.  
17 THE WITNESS: I believe I  
18 already said that this looks  
19 consistent.  
20 BY MR. TISI:  
21 Q. Okay. And one of the things  
22 that would have included in 1999, if the  
23 press told you, would be reference to a  
24 workshop co-sponsored by the FDA. True?

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1 MS. FRAZIER: Objection to  
2 form.  
3 THE WITNESS: According to  
4 this statement on the screen, that  
5 is what was included in this  
6 statement.  
7 BY MR. TISI:  
8 Q. And the purpose of  
9 specifically referencing the FDA would be  
10 to give reassurance that it was safe,  
11 that talc was safe, true?  
12 MS. FRAZIER: Objection to  
13 form.  
14 THE WITNESS: Like I said, I  
15 don't know why this was in there.  
16 I don't know.  
17 BY MR. TISI:  
18 Q. Okay. All right. So let's  
19 go to --  
20 MR. TISI: I'm going to  
21 attach for purposes of -- and this  
22 is not in your binder.  
23 But I will attach Exhibit  
24 Number P1.670, and ask that you

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1 just take a look at it.  
2 (Document marked for  
3 identification as Exhibit  
4 P1.670.)  
5 BY MR. TISI:  
6 Q. And this is an article by  
7 Carr in 1994. It's an article entitled  
8 Talc: Consumer Uses and Health  
9 Perspectives.  
10 And you'll see it's a 1994  
11 document, correct?  
12 A. Yes.  
13 Q. And I will represent to you  
14 that this is the document to which  
15 this -- and meeting, to which this  
16 refers, this statement refers.  
17 MR. TISI: With that, let me  
18 go to exhibit number -- and  
19 Tab 45, which is Exhibit  
20 Number P1.367 [sic].  
21 (Document marked for  
22 identification as Exhibit  
23 P1.637.)  
24 MR. TISI: Can you go to

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1 that one please, Dan?  
2 MS. FRAZIER: Hey, Chris, do  
3 you -- are you done with the  
4 exhibit that's up on the screen  
5 right now?  
6 MR. TISI: Correct. I am  
7 done with it.  
8 MS. FRAZIER: Okay.  
9 TRIAL TECH: Chris, can you  
10 say the number one more time for  
11 me?  
12 MR. TISI: Yeah, it's 637 --  
13 I'm sorry, 670.  
14 I'm sorry, it's 637. Yeah.  
15 BY MR. TISI:  
16 Q. Now, Mr. McKeegan, this is  
17 an e-mail, have you seen this -- you've  
18 seen -- take a look at this document.  
19 This is an e-mail from you  
20 to a gentleman by the name of Michael  
21 Chudkowski dated February 13, 1998.  
22 Do you see that?  
23 A. Yes.  
24 Q. And it's entitled Talc, do

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1 you see that?  
2 A. Yes.  
3 Q. And it's forwarding an  
4 e-mail between you and Johns Hopkins --  
5 John Hopkins and John O'Shaughnessy. Do  
6 you see that?  
7 A. Yes.  
8 Q. And this is an e-mail in  
9 which you say you got a call from the  
10 CTFA, which is the industry trade group,  
11 correct?  
12 A. Correct.  
13 Q. That a -- CBS Morning News  
14 and a producer named Doug Longine about  
15 talc and ovarian cancer.  
16 Do you see that?  
17 A. Yes.  
18 Q. And it said, "Irene called  
19 us to alert us and get our statement on  
20 talc before they responded back. She is  
21 doing the same with other manufacturers."  
22 Do you see that?  
23 A. Yes.  
24 Q. It says, "CBS apparently

<p style="text-align: right;">Page 62</p> <p>1 talked to John Bailey at the FDA who 2 expressed to them concern about talc and 3 ovarian cancer. We do not know much more 4 and certainly don't know exactly what he 5 said." 6 Do you see that? 7 A. Yes. 8 Q. And so this indicates to you 9 and provides you with some notice that 10 John Bailey at the FDA expressed concern 11 about the risk of talc and ovarian 12 cancer. Do you see that? 13 MS. FRAZIER: Objection to 14 form. 15 THE WITNESS: I do see that 16 that is here in this e-mail. 17 BY MR. TISI: 18 Q. Okay. And, again, this is 19 an e-mail from you to, among others, the 20 company lawyer, true? 21 A. Yeah -- 22 Q. John O'Shaughnessy -- 23 A. I believe John O'Shaughnessy 24 was an attorney at J&amp;J.</p>	<p style="text-align: right;">Page 64</p> <p>1 correct? 2 MS. FRAZIER: Objection to 3 form. 4 THE WITNESS: That is the 5 e-mail that -- that is what it 6 says in the e-mail. 7 BY MR. TISI: 8 Q. Okay. And, again, this 9 statement refers to the 1994 workshop 10 co-sponsored by the FDA. 11 A. Yes. 12 Q. And it indicates, the e-mail 13 that you wrote, indicates that we may 14 need to tweak this statement. Do you see 15 that? 16 A. Yes. 17 Q. Okay. And asked that the 18 company lawyer and John Hopkins call you 19 individually to discuss that issue. Do 20 you see that? 21 A. Yes. 22 Q. Do you have any reason to 23 believe that when the head of corporate 24 communications, the manager of corporate</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Okay. And it says, "We have 2 not gotten a call from CBS yet, but we 3 should be prepared in case we need to 4 tweak our statement at all. If you could 5 each call me next week, we can talk more 6 about what we know and what we may need 7 to do." 8 Do you see that? 9 A. Yes. 10 Q. And you say, "The most 11 recent statement is attached." 12 A. Okay. 13 Q. Do you see that? 14 A. Yes. 15 Q. Okay. And if you look, if 16 you look at Page 2 of this document, the 17 statement that we just reviewed from your 18 1999 e-mail is exactly the same statement 19 that is attached to this e-mail. True? 20 A. That is correct. 21 Q. So this 1999 e-mail to, 22 among others, the company -- the J&amp;J 23 corporate lawyer, says that this is the 24 statement that you have been using,</p>	<p style="text-align: right;">Page 65</p> <p>1 communications as you were at that time 2 asks -- 3 A. I was not the head of 4 corporate communications. 5 Q. Okay. You were the -- I'm 6 sorry, you were the manager, correct? 7 Mr. Leebaw -- 8 A. That's correct. 9 Q. Okay. That when you made 10 this request, that people would not have 11 responded to you? 12 MS. FRAZIER: Objection to 13 form. 14 THE WITNESS: I'm sorry, I 15 don't understand your question. 16 BY MR. TISI: 17 Q. Yeah. You asked two people 18 to call you about the statement by 19 Dr. Bailey at the FDA that he had a 20 concern about the risk of ovarian cancer 21 and talc, right? 22 A. Yes. 23 MS. FRAZIER: Objection to 24 form.</p>

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1 BY MR. TISI:  
2 Q. You indicate that the  
3 statement may need to be tweaked,  
4 correct?  
5 A. That is what is in the  
6 e-mail.  
7 Q. And just to be clear, the  
8 statement would be one that would be used  
9 to communicate with the media and through  
10 the media to the public, correct?  
11 MS. FRAZIER: Objection to  
12 form.  
13 THE WITNESS: According to  
14 this e-mail, specifically with  
15 CBS.  
16 BY MR. TISI:  
17 Q. Right. And CBS broadcasts  
18 to the public, correct?  
19 A. Yes.  
20 Q. Okay. And this statement  
21 was one that you indicate was being used,  
22 correct?  
23 A. Yes.  
24 Q. And it's the same statement

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1 that was used the following year, in  
2 1999, that you attached to the e-mail  
3 that we just talked about before,  
4 correct?  
5 A. It does have the same name,  
6 yes.  
7 Q. And you asked that people  
8 contact you in case this information  
9 needed to be tweaked, correct?  
10 MS. FRAZIER: Objection to  
11 form.  
12 THE WITNESS: That is  
13 what -- that is what the e-mail  
14 says.  
15 BY MR. TISI:  
16 Q. Okay. Now, John Bailey at  
17 the FDA, this document indicates John  
18 Bailey is at the FDA. The FDA is  
19 specifically referred to in the statement  
20 that you are using with the press,  
21 correct?  
22 MS. FRAZIER: Objection to  
23 form.  
24 THE WITNESS: It does say

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1 that John Bailey was at the FDA.  
2 BY MR. TISI:  
3 Q. Okay. And the FDA was  
4 actually referred to in your statement,  
5 correct?  
6 A. That is the statement that  
7 would have been used by corporate  
8 communications at that time.  
9 Q. And it had the phrase "FDA"  
10 in it, correct?  
11 A. That is correct.  
12 MR. TISI: Would you go to  
13 Exhibit Number 51.  
14 (Document marked for  
15 identification as Exhibit  
16 P1.643.)  
17 MR. TISI: Tab 51. That's  
18 Exhibit 643.  
19 BY MR. TISI:  
20 Q. Now we're marching ahead to  
21 2000. And this is an e-mail to a Fritz  
22 Grutzner from a Gordon Rawlston.  
23 Do you see that?  
24 A. Yes.

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1 Q. Okay. And it says  
2 Stockholders Meeting - Powder Questions,  
3 correct?  
4 A. Yes.  
5 Q. Okay. And, "Attached are  
6 two draft questions and answers. The  
7 answers are based on approved responses  
8 from our Info Center and corporate PR.  
9 John McKeegan has given his okay."  
10 Do you see that?  
11 A. Yes.  
12 Q. Okay. Do you have any  
13 reason to believe that you did not give  
14 your approval for the statement provided  
15 to -- at the stockholders meeting as  
16 indicated in this e-mail?  
17 MS. FRAZIER: Objection to  
18 form.  
19 THE WITNESS: Based on how  
20 things would go on, that at that  
21 time I would only be commenting on  
22 whether this was consistent with  
23 statements that we would have been  
24 making.

<p style="text-align: right;">Page 70</p> <p>1 BY MR. TISI:</p> <p>2 Q. Okay.</p> <p>3 A. That had already been prior</p> <p>4 approved by the experts at Johnson &amp;</p> <p>5 Johnson.</p> <p>6 Q. Okay. So let's go to the</p> <p>7 second page. And it says, "Why does</p> <p>8 Johnson's Baby Powder still sell talcum</p> <p>9 powder when it's been proven to cause</p> <p>10 ovarian cancer?"</p> <p>11 Do you see that question?</p> <p>12 A. Yes.</p> <p>13 Q. And underneath is a</p> <p>14 statement, which is exactly the same</p> <p>15 statement we've been talking about from</p> <p>16 1999 and 1998. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And it specifically refers</p> <p>19 to the FDA, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And it does not appear that</p> <p>22 that statement was tweaked at all, does</p> <p>23 it, from the 1990 --</p> <p>24 MS. FRAZIER: Objection to</p>	<p style="text-align: right;">Page 72</p> <p>1 A. Oh, I see what you're</p> <p>2 saying. It does not -- it looks to be</p> <p>3 the same statement. And this was what</p> <p>4 year?</p> <p>5 Q. 2000.</p> <p>6 A. 2000. So this does seem --</p> <p>7 appear to be the same statement.</p> <p>8 Q. Okay. And so just to be</p> <p>9 clear, this statement was a statement</p> <p>10 that was being used in 1998, 1999, and,</p> <p>11 again, it's being used in 2000, true?</p> <p>12 A. That is correct.</p> <p>13 Q. And it refers specifically</p> <p>14 to the workshop co-sponsored by the FDA,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. Now, just to back up for a</p> <p>18 second. You would agree with me that it</p> <p>19 is J&amp;J's -- J&amp;J corporate responsibility</p> <p>20 not to be misleading in any fashion with</p> <p>21 the public or, in this case, the</p> <p>22 shareholders?</p> <p>23 MS. FRAZIER: Form.</p> <p>24 THE WITNESS: It would be</p>
<p style="text-align: right;">Page 71</p> <p>1 form.</p> <p>2 BY MR. TISI:</p> <p>3 Q. From the 1998 e-mail that</p> <p>4 you indicated that the statement might</p> <p>5 need to be tweaked?</p> <p>6 MS. FRAZIER: Objection to</p> <p>7 form.</p> <p>8 THE WITNESS: As I recall</p> <p>9 from the earlier e-mail, it was a</p> <p>10 question as to whether it would</p> <p>11 need to be tweaked. This does</p> <p>12 seem to be the same statement in</p> <p>13 Question 1.</p> <p>14 BY MR. TISI:</p> <p>15 Q. Okay. And so it does not</p> <p>16 appear that the statement was tweaked at</p> <p>17 all with respect to any aspect of this,</p> <p>18 including the FDA and the comments that</p> <p>19 allegedly Dr. Bailey had made, correct?</p> <p>20 A. Dr. Bailey?</p> <p>21 Q. Dr. Bailey. In the e-mail</p> <p>22 we looked at before, Dr. Bailey from the</p> <p>23 FDA indicated a concern about talc and</p> <p>24 ovarian cancer. Do you remember that?</p>	<p style="text-align: right;">Page 73</p> <p>1 our role in corporate</p> <p>2 communications be making sure that</p> <p>3 the statements that we provide are</p> <p>4 accurate to the best of our</p> <p>5 information, according to the</p> <p>6 experts at Johnson &amp; Johnson.</p> <p>7 BY MR. TISI:</p> <p>8 Q. Let's go -- now I looked in</p> <p>9 the documents that were produced. Do you</p> <p>10 ever remember Mr. O'Shaughnessy or</p> <p>11 Mr. Hopkins getting back to you to ask</p> <p>12 you questions about whether or not the</p> <p>13 statement needed to be tweaked in 1998</p> <p>14 when you asked them to?</p> <p>15 MS. FRAZIER: Objection to</p> <p>16 form.</p> <p>17 THE WITNESS: No, that was</p> <p>18 20 years ago.</p> <p>19 BY MR. TISI:</p> <p>20 Q. That's -- so the answer to</p> <p>21 the question is you do not recall?</p> <p>22 A. I do not recall.</p> <p>23 Q. If you did have a</p> <p>24 conversation with the corporate lawyer</p>

<p style="text-align: right;">Page 74</p> <p>1 about the statements of -- in this  2 statement or Mr. Hopkins or Dr. Hopkins,  3 would that have been something that in  4 your corporate -- in your practice you  5 would have made note of by writing it  6 down somewhere either in an e-mail --  7 MS. FRAZIER: Objection to  8 form.  9 MR. TISI: I'm sorry, I'm  10 not finished.  11 BY MR. TISI:  12 Q. Either in a memo or form in  13 some fashion?  14 MS. FRAZIER: Objection to  15 form.  16 THE WITNESS: I don't recall  17 that I ever would have done that,  18 no.  19 BY MR. TISI:  20 Q. Now, I'd like you to go to  21 Tab Number 73 which would be 655 -- 665,  22 excuse me.  23 (Document marked for  24 identification as Exhibit</p>	<p style="text-align: right;">Page 76</p> <p>1 A. Yes, it does. Colleen  2 Goggins though, as an example, was CPCUS.  3 Q. Okay. All right. And it  4 says, "These are the finals of the  5 statements and Q&amp;A."  6 Do you see that?  7 A. Yes.  8 Q. Okay. Now, this is slightly  9 different, if you look at Page 2. "Does  10 perineal talc use cause ovarian cancer?"  11 Do you see that?  12 A. Yes.  13 Q. Okay. It says, "In  14 conventional animal dosing studies, there  15 is no evidence of ovarian cancer. Based  16 on available scientific data, no cause  17 and effect ... has been established  18 showing that the use of talc can cause  19 ovarian cancer."  20 Do you see that?  21 A. Yes.  22 Q. Okay. And it goes on to  23 say, "The 1994 panel, co-sponsored by the  24 FDA concluded" -- and then it</p>
<p style="text-align: right;">Page 75</p> <p>1 P1.665.)  2 BY MR. TISI:  3 Q. We're fast forwarding to  4 December of 2000. Do you see that?  5 A. Yes.  6 Q. And this is an e-mail from  7 you?  8 A. Yes.  9 Q. And this is to mostly people  10 who are in J&amp;J corporate, correct?  11 A. Does not appear to be.  12 Q. Do you know who Colleen  13 Goggins was?  14 A. I believe at this time she  15 was the head of the Consumer Products  16 companies.  17 Q. Okay. For Johnson &amp; Johnson  18 corporate, correct?  19 A. That is not correct. That  20 was a separate operating company.  21 Q. Okay. What about any of  22 the -- if there's an e-mail that says  23 JJCUS, Doesn't that indicate that they  24 were with J&amp;J corporate?</p>	<p style="text-align: right;">Page 77</p> <p>1 indicates -- it quotes from the document.  2 Do you see that?  3 A. Yes.  4 Q. Do you know -- and this  5 document, again in use in late 2000,  6 refers specifically to the 1994 workshop,  7 correct?  8 A. Yes.  9 Q. And this is the final  10 statement of the Q&amp;A that was being used  11 for talc.  12 Do you see that?  13 MS. FRAZIER: Object to  14 form.  15 THE WITNESS: That is what  16 is stated in the e-mail.  17 BY MR. TISI:  18 Q. Now, in the cover e-mail  19 here, your boss Jeff Leebaw is listed,  20 correct?  21 A. Yes.  22 Q. And is John O'Shaughnessy on  23 here as well?  24 A. Yes, he is.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q. And this is called a 2 reactive statement, correct? 3 A. Well, the e-mail, no. 4 Q. Okay. 5 A. The Q&amp;A, no. But on the 6 fourth page, there does seem to be a 7 draft of a reaction statement. 8 Q. And what is a reactive 9 statement? 10 A. This would be a statement 11 that we are providing in case somebody 12 called us for our reaction to some sort 13 of event. 14 Q. Okay. On Page 3, the 15 question is asked: "Are women at risk if 16 they have used talc?" 17 Do you see that? 18 A. Yes. 19 Q. Okay. It says that "there 20 is no convincing evidence that cosmetic 21 talc, when used as intended, presents a 22 health risk to consumers." 23 Do you see that? 24 A. I see that.</p>	<p style="text-align: right;">Page 80</p> <p>1 BY MR. TISI: 2 Q. You don't know whether or 3 not you would have said anything about a 4 risk that women might need to know that 5 there was a controversy surrounding talc 6 and a deadly disease? 7 A. The -- 8 MS. FRAZIER: Objection to 9 form. Foundation. 10 THE WITNESS: The 11 information that I would be 12 providing would be the information 13 that I could get from our experts 14 so that we could provide the most 15 accurate information to them -- to 16 the public, through the media, and 17 we'd be responding to media 18 questions. 19 BY MR. TISI: 20 Q. Okay. And so if I was with 21 CBS News, and I looked at this question 22 and answer and said, you know, I am 23 reading in the medical literature, and 24 I'm just a reporter, and I'm reading in</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. Okay. Is it your 2 understanding, do you have any 3 understanding as to whether or not 4 evidence has to be convincing to J&amp;J 5 before women are warned? 6 MS. FRAZIER: Objection to 7 form. Foundation. 8 THE WITNESS: That would 9 have been well beyond my role as 10 somebody who was answering media 11 questions. 12 BY MR. TISI: 13 Q. If I was with the media and 14 I said, Well, Dr. -- Mr. McKeegan, there 15 is evidence out there. You may not be 16 convinced of it. But don't you think 17 women have the right to know. What would 18 your answer have been? 19 MS. FRAZIER: Objection to 20 form. 21 THE WITNESS: I can't say 22 what my answer would have been 23 20 years ago, because I'm not just 24 that close to these issues.</p>	<p style="text-align: right;">Page 81</p> <p>1 the medical literature there are some 2 doctors like Dr. Cramer, we looked at the 3 article before, who thought women should 4 be told of the potential risk with a 5 product that you can buy on the shelves 6 of any Kmart or Walmart, that women have 7 a right to know, what would you have 8 said? 9 MS. FRAZIER: Objection to 10 form. Foundation. 11 THE WITNESS: I would have 12 been providing a statement that 13 was based on the best information 14 that I was able to gather from our 15 experts at Johnson &amp; Johnson. 16 BY MR. TISI: 17 Q. And what would you have 18 said? 19 MS. FRAZIER: Same 20 objection. 21 THE WITNESS: It looks like 22 I would have said -- it looks like 23 I would have said, you know, what 24 was in these statements or Q&amp;A.</p>

<p style="text-align: right;">Page 82</p> <p>1 BY MR. TISI:</p> <p>2 Q. Okay. And so what would --</p> <p>3 A. According to what we have</p> <p>4 here in front of us.</p> <p>5 Q. Okay. And so what you would</p> <p>6 have done in response to that question,</p> <p>7 you would have simply said, well, we're</p> <p>8 not convinced?</p> <p>9 MS. FRAZIER: Objection to</p> <p>10 form. Foundation.</p> <p>11 BY MR. TISI:</p> <p>12 Q. The evidence isn't</p> <p>13 convincing to us?</p> <p>14 MS. FRAZIER: Same</p> <p>15 objection.</p> <p>16 THE WITNESS: I would have</p> <p>17 been providing information that</p> <p>18 was based on the information that</p> <p>19 I had gathered from the experts at</p> <p>20 Johnson &amp; Johnson, and they would</p> <p>21 have reviewed those answers before</p> <p>22 I provided them.</p> <p>23 BY MR. TISI:</p> <p>24 Q. Right. And if I was with</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Based on her e-mail address,</p> <p>2 that appears to be correct.</p> <p>3 Q. And she's forwarding your</p> <p>4 final talc statement to folks, other</p> <p>5 folks on December 5, 2000, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And it says, "As previously</p> <p>8 requested, you are to direct all outside</p> <p>9 inquiries to John McKeegan at corporate."</p> <p>10 A. Yes.</p> <p>11 Q. And -- so all media</p> <p>12 questions relating to talc and ovarian</p> <p>13 cancer, I'm going to separate this into</p> <p>14 two questions, were referred to J&amp;J</p> <p>15 corporate, correct?</p> <p>16 A. All media questions,</p> <p>17 correct.</p> <p>18 Q. And within J&amp;J corporate,</p> <p>19 they were directed to you, correct?</p> <p>20 A. That is correct.</p> <p>21 Q. And so J&amp;J corporate would</p> <p>22 have been in charge of interfacing with</p> <p>23 the public and the media about talc</p> <p>24 questions, correct?</p>
<p style="text-align: right;">Page 83</p> <p>1 the media and I asked you the question,</p> <p>2 do -- shouldn't women be told about a</p> <p>3 potential risk, your response would have</p> <p>4 been, we are not convinced?</p> <p>5 MS. FRAZIER: Objection to</p> <p>6 form. Foundation.</p> <p>7 THE WITNESS: I can't</p> <p>8 speculate on what we would have</p> <p>9 said. I don't recall getting that</p> <p>10 question.</p> <p>11 BY MR. TISI:</p> <p>12 Q. Please go to exhibit -- Tab</p> <p>13 Number 54.</p> <p>14 (Document marked for</p> <p>15 identification as Exhibit</p> <p>16 P1.646.)</p> <p>17 BY MR. TISI:</p> <p>18 Q. Now this is a Lorena</p> <p>19 Telofski. Do you remember who</p> <p>20 Ms. Telofski was?</p> <p>21 A. No.</p> <p>22 Q. She's forwarding -- she's</p> <p>23 with the consumer product company,</p> <p>24 correct, based upon her e-mail address?</p>	<p style="text-align: right;">Page 85</p> <p>1 MS. FRAZIER: Objection to</p> <p>2 form.</p> <p>3 THE WITNESS: We would have</p> <p>4 been answering questions that were</p> <p>5 presented to us by the media.</p> <p>6 BY MR. TISI:</p> <p>7 Q. Okay. And when we say we,</p> <p>8 we're talking about J&amp;J corporate,</p> <p>9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And attached to this</p> <p>12 document is the Q&amp;A statement that we</p> <p>13 talked about -- we've been talking about,</p> <p>14 about talc and ovarian cancer, correct?</p> <p>15 MS. FRAZIER: Objection to</p> <p>16 form.</p> <p>17 THE WITNESS: There do</p> <p>18 appear to be some edits here.</p> <p>19 BY MR. TISI:</p> <p>20 Q. Okay. And -- but it does</p> <p>21 also indicate, in response to the</p> <p>22 question about talc and ovarian cancer,</p> <p>23 it refers to the panel meeting</p> <p>24 co-sponsored by the FDA, correct?</p>

<p style="text-align: right;">Page 86</p> <p>1 A. Yes, it does.</p> <p>2 MR. TISI: Go to Tab</p> <p>3 Number 55.</p> <p>4 (Document marked for</p> <p>5 identification as Exhibit</p> <p>6 P1.647.)</p> <p>7 BY MR. TISI:</p> <p>8 Q. And this is forwarding an</p> <p>9 e-mail from Mike Chudkowski to, among</p> <p>10 other people, you?</p> <p>11 A. Yes.</p> <p>12 Q. And attached to that e-mail</p> <p>13 is an e-mail from Irene Malbin, who I'll</p> <p>14 represent to you is with the CFTA, which</p> <p>15 is the industry trade group. If you look</p> <p>16 on Page 2?</p> <p>17 A. Okay.</p> <p>18 Q. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And if you look in the -- on</p> <p>21 the list of people that were being copied</p> <p>22 on this e-mail, among other people were</p> <p>23 you, correct?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. And so this e-mail was going</p> <p>2 to both you in corporate, your boss at</p> <p>3 corporate, and Sarah Colamarino at the</p> <p>4 consumer products company. True?</p> <p>5 A. True.</p> <p>6 Q. And it indicates, it's</p> <p>7 forwarding a Q&amp;A to, among other people,</p> <p>8 other companies that manufacture talc,</p> <p>9 Avon, Unilever, et cetera, correct?</p> <p>10 A. I don't know actually if</p> <p>11 they -- I mean there's some on here that</p> <p>12 I don't know that they would have. Like</p> <p>13 Dow Corning.</p> <p>14 But there are a number of</p> <p>15 consumer products companies as well as</p> <p>16 apparently some pharmaceutical companies</p> <p>17 on this e-mail list.</p> <p>18 Q. Okay. So, sir, just to be</p> <p>19 clear so that the jury understands what's</p> <p>20 going on here is, this is an e-mail from</p> <p>21 the consumer trade group CFTA, which I'll</p> <p>22 later represent to you later became PCPC.</p> <p>23 A. C-T-F-A.</p> <p>24 Q. CTFA. I always switch</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. Okay. And your boss Jeff</p> <p>2 Leebaw, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And a woman by the name of</p> <p>5 Sarah Colamarino. Do you see that?</p> <p>6 A. Hold on please, I'm sorry.</p> <p>7 MR. TISI: You can highlight</p> <p>8 that if you don't mind, Dan.</p> <p>9 BY MR. TISI:</p> <p>10 Q. You can look at the screen</p> <p>11 if you'd like. Do you see Sarah</p> <p>12 Colamarino?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And who is Sarah</p> <p>15 Colamarino?</p> <p>16 A. Sarah was -- I guess around</p> <p>17 this time she had moved over to the</p> <p>18 consumer products companies to lead</p> <p>19 public relations at those companies.</p> <p>20 Q. Okay. And so she would have</p> <p>21 been your counterpart at the consumer</p> <p>22 products company and you were at</p> <p>23 corporate, true?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 89</p> <p>1 those, and I apologize ahead of time for</p> <p>2 doing that.</p> <p>3 CTFA which later became</p> <p>4 PCPC. This is the industry trade group</p> <p>5 that represents talc manufacturers among</p> <p>6 other things, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And this is dated</p> <p>9 December 12, 2000 and -- 2000.</p> <p>10 A. Yes.</p> <p>11 Q. And it provides questions</p> <p>12 and answers like we've been discussing</p> <p>13 you used internally, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And Number 6, does --</p> <p>16 the question is, "Does perineal talc</p> <p>17 use" -- "use cause ovarian cancer?"</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And it looks like this is</p> <p>21 the exact same language that was drafted</p> <p>22 at J&amp;J corporate for communications to</p> <p>23 the media if J&amp;J was contacted directly,</p> <p>24 correct?</p>

<p style="text-align: right;">Page 90</p> <p>1 MS. FRAZIER: Objection to 2 form. 3 THE WITNESS: It does appear 4 to be very similar. I don't know 5 that it's exact. It seems to be 6 some things missing at the end. 7 More talc use than anything else. 8 BY MR. TISI: 9 Q. Okay. All right. And it 10 specifically refers to a 1994 workshop 11 co-sponsored by the FDA. Do you see 12 that? 13 A. Yes. 14 Q. And it specifically again 15 talks about the FDA, correct? 16 A. Yes. 17 Q. Okay. This is the 18 year 2000, correct? 19 A. Yes. 20 Q. And Question Number 8 is the 21 question: "Are women at risk for using 22 talc?" 23 The same question and answer 24 that was provided, that we talked about</p>	<p style="text-align: right;">Page 92</p> <p>1 BY MR. TISI: 2 Q. I'm sorry, say it again, 3 sir. 4 A. Very similar. 5 Q. So now we've looked at the 6 J&amp;J and industry message on talc and 7 ovarian cancer over time, from 1998, 8 1999, and now we are in late 2000. 9 And you would agree that all 10 of those statements refer to the 1994 11 conference co-sponsored by the FDA? 12 A. Yes. 13 Q. And as somebody in PR, you 14 would agree that words matter and need to 15 be chosen carefully, correct? 16 MS. FRAZIER: Objection to 17 form. 18 THE WITNESS: I agree that 19 we have to be accurate with what 20 we are saying, yes. 21 BY MR. TISI: 22 Q. And you can't be if you omit 23 information, that could be -- that could 24 be misleading, true?</p>
<p style="text-align: right;">Page 91</p> <p>1 internally that was developed at J&amp;J, 2 correct? 3 MS. FRAZIER: Object to 4 form. 5 THE WITNESS: It does appear 6 to be the same. 7 BY MR. TISI: 8 Q. And so would you agree with 9 me that what was being used by the 10 industry appears to be, in large part, 11 what was being drafted at J&amp;J, and 12 specifically J&amp;J corporate? 13 MS. FRAZIER: Objection to 14 form. 15 THE WITNESS: I really have 16 no way of knowing that at this 17 point. This was 20 years ago. 18 BY MR. TISI: 19 Q. Okay. Well, it appears to 20 be the same -- or virtually identical 21 language, true? 22 A. Very similar, yes. 23 MS. FRAZIER: Objection to 24 form.</p>	<p style="text-align: right;">Page 93</p> <p>1 MS. FRAZIER: Objection to 2 form. 3 THE WITNESS: I'm not sure 4 what your question is. 5 BY MR. TISI: 6 Q. Well, would you -- if you 7 miss -- if you -- if in response to a 8 media question, you do not include all of 9 the relevant information, it can be 10 misleading, true? 11 MS. FRAZIER: Objection to 12 form. 13 THE WITNESS: I'm not sure 14 what you're trying to ask. 15 BY MR. TISI: 16 Q. Well, one of the reasons, if 17 you go back to your 1998 reason where you 18 indicated your statement may need to 19 be tweaked based upon what Dr. Bailey 20 said, that there was concern at the FDA 21 about talc and ovarian cancer. You put 22 that in your e-mail for the reason of 23 saying, you know, we may need to tweak 24 this to make sure it's accurate. We</p>

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1 don't want to mislead the public as to  
2 what the FDA was saying, correct?  
3 MS. FRAZIER: Objection to  
4 form.  
5 THE WITNESS: The only thing  
6 I know is what you showed me in  
7 that e-mail.  
8 BY MR. TISI:  
9 Q. Correct. And what would be  
10 the reason why you would reach out and  
11 suggest that your media statement might  
12 need to be tweaked based upon what  
13 Dr. Bailey was saying?  
14 MS. FRAZIER: Objection to  
15 form.  
16 THE WITNESS: My --  
17 according to that e-mail, my  
18 question would have been whether  
19 the statement needed to be  
20 adjusted or tweaked in any way.  
21 BY MR. TISI:  
22 Q. Based upon what Dr. Bailey  
23 was talking about concerning talc and  
24 ovarian cancer, true?

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1 MS. FRAZIER: Objection to  
2 form.  
3 THE WITNESS: Who was  
4 Dr. Bailey?  
5 BY MR. TISI:  
6 Q. Dr. Bailey was at the FDA.  
7 A. Okay. Who was he?  
8 Q. All right. We can go back  
9 to the document if you'd like. I'm happy  
10 to do that.  
11 A. Yeah, I don't know what -- I  
12 have not seen these e-mails in years and  
13 years and years.  
14 So who was Dr. Bailey?  
15 Q. Dr. Bailey was the head of  
16 the -- I'll represent to you Dr. Bailey  
17 at the time was the head of the division  
18 involving cosmetics and colors at the FDA  
19 that had responsibility for talc. And he  
20 got on TV apparently and indicated there  
21 was concern at the FDA about talc and  
22 ovarian cancer.  
23 Okay? Your question was, do  
24 we need to tweak our statement? Do you

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1 see that?  
2 A. That was apparently what was  
3 in the e-mail.  
4 Q. All right. So now my  
5 question is, did Dr. -- and it was  
6 specifically addressed to doctor -- to  
7 Mr. -- to Dr. Hopkins, if you can recall,  
8 and Mr. O'Shaughnessy, correct?  
9 A. Yes.  
10 Q. And you asked that they  
11 actually call you, true?  
12 A. That is in the e-mail.  
13 Q. Okay. And based upon our  
14 looking at the statement, the statements  
15 over time, there was no adjustment that  
16 would account for the FDA had concern  
17 about the risk of talc and ovarian  
18 cancer. Was there --  
19 MS. FRAZIER: Objection to  
20 form.  
21 THE WITNESS: I don't recall  
22 exactly what the circumstances  
23 around this would have been.  
24 BY MR. TISI:

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1 Q. Would you go to exhibit  
2 number -- Tab 53 which is Exhibit 645.  
3 (Document marked for  
4 identification as Exhibit  
5 P1.645.)  
6 MR. TISI: I'm sorry, can  
7 you go to Exhibit 645, Dan?  
8 BY MR. TISI:  
9 Q. This was an e-mail from you  
10 dated November 28, 2000, while you were  
11 drafting the final Q&A.  
12 Do you see that?  
13 A. Yes.  
14 Q. And you indicated in -- this  
15 is an e-mail from you?  
16 A. Yes.  
17 Q. It indicates to you, "These  
18 are prepared based upon where we left off  
19 at our last meeting, that we would have  
20 outside experts review this again."  
21 Do you see that?  
22 A. Yes.  
23 Q. Do you know what outside  
24 experts reviewed your Q&A?

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1 MS. FRAZIER: Objection to  
2 form.  
3 THE WITNESS: I have no  
4 idea.  
5 BY MR. TISI:  
6 Q. Do you know if they would be  
7 paid experts by Johnson & Johnson?  
8 MS. FRAZIER: Objection to  
9 form.  
10 THE WITNESS: Since I would  
11 not have been any -- involved in  
12 hiring anybody, I would have no  
13 idea.  
14 BY MR. TISI:  
15 Q. It says you "consciously  
16 here left out the names of the products  
17 to shield them as much as possible."  
18 Do you see that?  
19 A. I do.  
20 Q. Why would you want to shield  
21 any discussion about Johnson's Baby  
22 Powder or Shower to Shower in connection  
23 with the issues relating to talc and  
24 ovarian cancer?

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1 MS. FRAZIER: Objection to  
2 form.  
3 THE WITNESS: Since this is  
4 nearly 21 years ago, I do not  
5 know.  
6 BY MR. TISI:  
7 Q. And attached to this  
8 draft -- this article is a draft of the  
9 two questions that we talked about which  
10 is does perineal use of talc -- use --  
11 I'm sorry.  
12 It says "Does perineal talc  
13 use cause ovarian cancer?" on Page 3.  
14 Do you see that?  
15 A. Yes.  
16 Q. And it doesn't have any  
17 reference to Johnson's Baby Powder or  
18 Shower to Shower, does it?  
19 MS. FRAZIER: Objection to  
20 form.  
21 THE WITNESS: I do not see  
22 any reference to those products.  
23 BY MR. TISI:  
24 Q. Any -- to the -- but it does

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1 specifically refer to the FDA, true?  
2 A. Yes.  
3 Q. And it asks the question we  
4 love talking about: "Are women at risk  
5 if they use talc?" And it again talks  
6 about no convincing evidence.  
7 Do you see that?  
8 A. Yes.  
9 Q. And when you say no  
10 convincing evidence, do you know who  
11 you're referring to here as to who needs  
12 to be convinced?  
13 MS. FRAZIER: Objection to  
14 form.  
15 THE WITNESS: I really don't  
16 understand what you're trying to  
17 ask.  
18 BY MR. TISI:  
19 Q. I'm asking you convincing  
20 evidence. Who is the -- who is the  
21 people making the decision about what  
22 evidence is convincing or not?  
23 MS. FRAZIER: Objection to  
24 form.

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1 THE WITNESS: At this point  
2 20 years ago, I have no idea how  
3 this language came about.  
4 BY MR. TISI:  
5 Q. I'm going to --  
6 MR. TISI: This is probably  
7 a good time to take a quick break,  
8 unless you want to keep going,  
9 Mr. McKeegan, I have no problem  
10 keeping going. I just -- this is  
11 a -- if we're going to take a  
12 break, this is probably a good  
13 time to do it.  
14 THE WITNESS: That sounds  
15 good.  
16 MR. TISI: Kat, do you want  
17 to do five minutes just so  
18 everyone can stretch their legs.  
19 MS. FRAZIER: That sounds  
20 good to me. Is that enough time  
21 for you, John?  
22 THE WITNESS: I do need to  
23 make a quick phone call so if I'm  
24 a little late, I'll be back very

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1 quickly.

2 MR. TISI: How about we make

3 it ten so you don't feel like you

4 have to kill yourself to get off

5 the phone.

6 THE WITNESS: Okay.

7 MR. TISI: All right?

8 MS. FRAZIER: Sounds good.

9 THE VIDEOGRAPHER: The time

10 is 11:35 a.m. Off the record.

11 (Short break.)

12 THE VIDEOGRAPHER: It's

13 11:52 a.m. On the record.

14 BY MR. TISI:

15 Q. Okay. All right. So,

16 Mr. McKeegan, I'm going to ask you a

17 couple questions now.

18 We talked before about the

19 media statement that was prepared by J&J

20 corporate, and to be used with, among

21 other things, the media and shareholders.

22 Do you remember that?

23 MS. FRAZIER: Objection to

24 form.

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1 THE WITNESS: Yes, I

2 remember.

3 BY MR. TISI:

4 Q. Okay. And, again, to set

5 the table for the questions that I'm

6 about ready to ask you, it referred

7 specifically to the FDA and the FDA

8 conference. Do you remember that?

9 A. Yes.

10 MS. FRAZIER: Objection to

11 form.

12 BY MR. TISI:

13 Q. And you became aware, at

14 least in 1998, there was some suggestion

15 that that media statement might need to

16 be tweaked to reflect what the FDA, and

17 specifically a Dr. Bailey at the FDA, was

18 saying about the concern about talc and

19 ovarian cancer, correct?

20 MS. FRAZIER: Objection to

21 form.

22 THE WITNESS: I was made

23 aware of a media inquiry from

24 the -- by the CTFA about CBS News

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1 making an inquiry based on some

2 statements that somebody at the

3 FDA had made.

4 BY MR. TISI:

5 Q. Right. And if -- again, if

6 we can go to Exhibit Number 637, which is

7 Tab 45 of your notebook, the statement

8 was "John Bailey at the FDA expressed to

9 them some concern about the risk of talc

10 and ovarian cancer. We do not know much

11 more than that and certainly don't know

12 exactly what he said."

13 Do you see that?

14 A. Yes.

15 Q. Okay. And that was a

16 statement that -- that was of some

17 interest and why you were forwarding it

18 to Mr. O'Shaughnessy and Mr. Hopkins with

19 a cc to your boss Jeff Leebaw.

20 Do you see that?

21 A. Yes.

22 MS. FRAZIER: Objection to

23 form.

24 BY MR. TISI:

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1 Q. And the question was, you

2 wanted to speak to both Mr. Hopkins and

3 Mr. O'Shaughnessy about whether or not

4 what you were telling the public through

5 the media and your shareholders needed to

6 be tweaked, right?

7 MS. FRAZIER: Objection to

8 form.

9 THE WITNESS: Incorrect.

10 This is 1998.

11 BY MR. TISI:

12 Q. Okay.

13 A. And this was a question

14 about whether this statement was still

15 accurate to use in terms of a potential

16 inquiry from CBS News.

17 And from this e-mail, I

18 can't tell whether we actually ever

19 received a call or not.

20 Q. Okay. And you specifically

21 say, "If you could each call me next

22 week," referring to Mr. Hopkins,

23 Dr. Hopkins, and Mr. O'Shaughnessy,

24 correct?

<p style="text-align: right;">Page 106</p> <p>1 A. Correct.</p> <p>2 Q. Okay. "And we can talk more</p> <p>3 about what we know and what we may need</p> <p>4 to do," correct?</p> <p>5 A. Correct.</p> <p>6 Q. And it says, and</p> <p>7 specifically the statement before is that</p> <p>8 your statement to the media may need to</p> <p>9 be tweaked. And you attached the</p> <p>10 statement, correct?</p> <p>11 MS. FRAZIER: Objection to</p> <p>12 form.</p> <p>13 THE WITNESS: The question</p> <p>14 is, to them, is "in case we need</p> <p>15 to tweak our statement at all."</p> <p>16 BY MR. TISI:</p> <p>17 Q. Okay. And this statement is</p> <p>18 the one that is attached to this</p> <p>19 document, which you had indicated is the</p> <p>20 one that is consistent with what you had</p> <p>21 been telling the media in this time</p> <p>22 frame, correct?</p> <p>23 A. Correct.</p> <p>24 MS. FRAZIER: Objection to</p>	<p style="text-align: right;">Page 108</p> <p>1 Mr. O'Shaughnessy, we have your boss</p> <p>2 Jeffrey Leebaw, and we have the trade</p> <p>3 organization through Ms. Malbin, correct?</p> <p>4 MS. FRAZIER: Objection to</p> <p>5 form.</p> <p>6 THE WITNESS: When you are</p> <p>7 talking about that, you are</p> <p>8 talking about the people that</p> <p>9 would have been made aware based</p> <p>10 on my e-mail?</p> <p>11 BY MR. TISI:</p> <p>12 Q. Yes.</p> <p>13 A. Irene is not on this.</p> <p>14 Q. Well, Irene, you had gotten</p> <p>15 a call from Irene so she was aware of it.</p> <p>16 That's what you said?</p> <p>17 A. Right. But I was making</p> <p>18 John Hopkins, John O'Shaughnessy, and</p> <p>19 Jeff Leebaw aware of this, according to</p> <p>20 this e-mail.</p> <p>21 Q. Correct. Okay. And so my</p> <p>22 point is, there are three different</p> <p>23 entities that are involved in this,</p> <p>24 what's going on at the time in 1998.</p>
<p style="text-align: right;">Page 107</p> <p>1 form.</p> <p>2 BY MR. TISI:</p> <p>3 Q. And so, this, you know, just</p> <p>4 from a real practical standpoint, a</p> <p>5 statement from the FDA expressing concern</p> <p>6 about the risk of talc and ovarian cancer</p> <p>7 was enough to make you make this inquiry</p> <p>8 of both the -- Dr. Hopkins and the</p> <p>9 company lawyer, right?</p> <p>10 MS. FRAZIER: Objection to</p> <p>11 form.</p> <p>12 THE WITNESS: The potential</p> <p>13 for a question to Johnson &amp;</p> <p>14 Johnson based -- from CBS News,</p> <p>15 was the impetus for the e-mail</p> <p>16 based on what I'm reading here.</p> <p>17 BY MR. TISI:</p> <p>18 Q. Correct. Okay. So now --</p> <p>19 and you were made aware of this through</p> <p>20 the CTFA, right?</p> <p>21 A. Correct.</p> <p>22 Q. Right. And what we have</p> <p>23 here are four different people or groups,</p> <p>24 we have Dr. Hopkins and</p>	<p style="text-align: right;">Page 109</p> <p>1 There's J&amp;J corporate through corporate</p> <p>2 communications, through you and</p> <p>3 Mr. Leebaw, correct?</p> <p>4 A. Okay.</p> <p>5 Q. Right. There's the CTFA who</p> <p>6 called you about this, correct?</p> <p>7 A. Okay.</p> <p>8 Q. Am I incorrect or no?</p> <p>9 A. I'm waiting for your</p> <p>10 question.</p> <p>11 Q. Well, no, how about</p> <p>12 answering the question I posed.</p> <p>13 A. I said okay.</p> <p>14 Q. You got a call from CTFA,</p> <p>15 right?</p> <p>16 A. Okay.</p> <p>17 Q. Is that a yes or no?</p> <p>18 A. I'm only going based on what</p> <p>19 this e-mail says.</p> <p>20 MS. FRAZIER: Objection to</p> <p>21 form.</p> <p>22 BY MR. TISI:</p> <p>23 Q. Right. And the e-mail says</p> <p>24 you got a call from the CTFA.</p>

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1 A. And I said okay.  
 2 Q. Does "okay" mean yes or no?  
 3 A. It means, apparently,  
 4 according to this e-mail, I received a  
 5 call from Irene Malbin at the CTFA.  
 6 Q. Okay. So we've got CTFA at  
 7 one end, we've got J&J corporate,  
 8 corporate communications through  
 9 yourself, and you are forwarding this on  
 10 to the company lawyer and to Johns  
 11 Hopkins, who as you understand was with  
 12 consumer products, true?  
 13 A. I actually have no memory of  
 14 John --  
 15 MS. FRAZIER: Objection to  
 16 form.  
 17 THE WITNESS: I'm sorry.  
 18 BY MR. TISI:  
 19 Q. Okay.  
 20 MS. FRAZIER: Object to  
 21 form.  
 22 THE WITNESS: I have no  
 23 memory of John Hopkins.  
 24 BY MR. TISI:

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1 Q. I'll represent to you that  
 2 he was a consultant, a former employee  
 3 but consulting with J&J on talc issues at  
 4 the time.  
 5 MS. FRAZIER: Objection to  
 6 form. Look at the -- hey, Chris,  
 7 just look at the year on that.  
 8 MR. TISI: Okay. All right.  
 9 BY MR. TISI:  
 10 Q. Anyway, let's move on. I  
 11 don't want to get bogged down on this.  
 12 And you notified your boss  
 13 Dr. -- Mr. Leebaw, correct?  
 14 A. Yes.  
 15 Q. And we indicated you do not  
 16 recall Mr. O'Shaughnessy or Dr. Hopkins  
 17 ever contacting you as you requested that  
 18 they do, right?  
 19 MS. FRAZIER: Objection to  
 20 form.  
 21 THE WITNESS: I have no  
 22 memory.  
 23 BY MR. TISI:  
 24 Q. Did you ever remember

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1 speaking to Mr. Leebaw about this?  
 2 A. No specific memory, no.  
 3 Q. Would you agree that if any  
 4 one of these people told you that the FDA  
 5 believed in 1994, even after the  
 6 co-sponsorship of the symposium on talc,  
 7 that the evidence supported the  
 8 possibility that talc could pose a risk  
 9 of ovarian cancer, you most likely would  
 10 have suggested that the -- that the  
 11 statement be tweaked to reflect that?  
 12 MS. FRAZIER: Objection to  
 13 form.  
 14 THE WITNESS: My -- the way  
 15 that we would do things in  
 16 corporate communications, we would  
 17 reach back to the people with the  
 18 most direct knowledge of this and  
 19 ask them the questions about  
 20 whether these statements needed to  
 21 be changed. That is apparently  
 22 what happened here.  
 23 BY MR. TISI:  
 24 Q. And if it turned out that

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1 the FDA still had concerns, that would be  
 2 material to what you were telling  
 3 shareholders in the media, true?  
 4 MS. FRAZIER: Objection to  
 5 form. Foundation.  
 6 THE WITNESS: Johnson &  
 7 Johnson -- Johnson & Johnson  
 8 experts would have instructed if  
 9 we needed to change these  
 10 statements in any way.  
 11 BY MR. TISI:  
 12 Q. Well, as somebody involved  
 13 in corporate communications and public  
 14 relations, you don't want to be  
 15 misleading, do you?  
 16 MS. FRAZIER: Objection to  
 17 form.  
 18 THE WITNESS: Apparently  
 19 according to this e-mail, I did  
 20 reach back to them to make sure  
 21 that our statement was still going  
 22 to be accurate or whether it  
 23 needed to be changed in any way.  
 24 BY MR. TISI:

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1 Q. Right. Because what  
2 Dr. Bailey had apparently talked about  
3 openly was that there was still a concern  
4 at the FDA about talc and ovarian cancer.  
5 And that would have been a material fact,  
6 true or not true?  
7 MS. FRAZIER: Objection to  
8 form.  
9 THE WITNESS: I have no idea  
10 what Dr. Bailey would have said.  
11 BY MR. TISI:  
12 Q. I'm asking you from the  
13 perspective of corporate PR, it raised a  
14 question in your mind as to whether or  
15 not the corporate statement should  
16 reflect a concern about talc and ovarian  
17 cancer.  
18 MS. FRAZIER: Objection to  
19 form.  
20 BY MR. TISI:  
21 Q. That's why you wrote the --  
22 that's why you wrote this e-mail, right?  
23 MS. FRAZIER: Objection to  
24 form.

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1 THE WITNESS: It looks like  
2 I sent this e-mail to ask for  
3 their input to see whether we  
4 needed to make any changes in our  
5 statement about talc.  
6 BY MR. TISI:  
7 Q. Correct. And the reason why  
8 you did that is because this statement by  
9 somebody at the FDA communicated to your  
10 trade organization, at least in your  
11 mind, created a question as to whether or  
12 not the statement needed to be tweaked,  
13 using your phrase?  
14 MS. FRAZIER: Objection to  
15 form.  
16 THE WITNESS: The question  
17 is about a potential media inquiry  
18 that could come to us from CBS  
19 News, and so we asked that the  
20 opinion of the people who would be  
21 closest to the issue to see  
22 whether this would have been  
23 anything that we would need to  
24 change our statement or make any

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1 adjustments to our statement.  
2 BY MR. TISI:  
3 Q. And you don't recall them  
4 ever contacting you about that, correct?  
5 MS. FRAZIER: Objection to  
6 form.  
7 THE WITNESS: According to  
8 the e-mail, this is 23 years ago,  
9 and I have no memory of the -- if  
10 we ever spoke of that.  
11 MR. TISI: I'd like to go to  
12 exhibit number -- this is not in  
13 your notebook because I put this  
14 in late. But it's a very short  
15 memorandum. P1.0446.  
16 Could you please bring that  
17 up please, Dan.  
18 (Document Marked for  
19 identification as Exhibit  
20 P1.446.  
21 BY MR. TISI:  
22 Q. Let me ask you to take a  
23 look at this. First of all, this is a  
24 fax from Stephen Gettings. I'll

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1 represent to you he is with CTFA. And  
2 the date is February 4, 1994. And if you  
3 look at the top left-hand corner, it's  
4 sent to some of the very same people who  
5 you made your inquiry about in 1998,  
6 specifically Mr. Hopkins,  
7 Mr. O'Shaughnessy, and your boss  
8 Mr. Leebaw.  
9 Do you see that?  
10 MS. FRAZIER: Objection to  
11 form.  
12 THE WITNESS: I do see their  
13 names on the to list of the memo.  
14 BY MR. TISI:  
15 Q. Okay. And these are the  
16 people who you specifically made a  
17 request to about the FDA's concerns about  
18 ovarian cancer.  
19 Do you see that?  
20 MS. FRAZIER: Object.  
21 Objection to form.  
22 THE WITNESS: According to  
23 this timeline of events, I would  
24 have asked -- been asking them

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1 four years later --  
 2 BY MR. TISI:  
 3 Q. Correct.  
 4 A. -- than what this memo was  
 5 indicating.  
 6 Q. Right. So this would have  
 7 been presumably -- and I asked  
 8 Mr. O'Shaughnessy about this. This would  
 9 have been a document that would have been  
 10 received at the time you made the inquiry  
 11 to, among others, Mr. O'Shaughnessy,  
 12 about the FDA's position, correct?  
 13 MS. FRAZIER: Objection to  
 14 form. Foundation.  
 15 THE WITNESS: I have no -- I  
 16 have no knowledge of this  
 17 memorandum.  
 18 BY MR. TISI:  
 19 Q. Okay.  
 20 A. At all.  
 21 Q. That's because -- that's  
 22 because Mr. O'Shaughnessy, Mr. Leebaw and  
 23 Mr. Hopkins never told you about it, did  
 24 they?

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1 MS. FRAZIER: Objection to  
 2 form.  
 3 THE WITNESS: I didn't even  
 4 start at J&J until three years  
 5 after this.  
 6 BY MR. TISI:  
 7 Q. Correct. And when you  
 8 reached back to them and said, we saw  
 9 something that Dr. Bailey had said, this  
 10 would have been -- assuming the date is  
 11 correct in 1994 -- this would have been  
 12 in their possession for some four years,  
 13 correct?  
 14 MS. FRAZIER: Objection to  
 15 form.  
 16 THE WITNESS: I have no  
 17 knowledge --  
 18 BY MR. TISI:  
 19 Q. Okay. Let's see what it --  
 20 A. I have no knowledge about  
 21 that document.  
 22 Q. Let's see -- let's see what  
 23 it says.  
 24 It says Talc Symposium

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1 Follow-up. Do you see that?  
 2 A. Yes.  
 3 Q. And we agree that the  
 4 corporate statement that you said was in  
 5 use cite to talc symposium co-sponsored  
 6 by the FDA, correct?  
 7 A. Chris, let me read the  
 8 document. Okay.  
 9 Q. Now, so then my question to  
 10 you is, when you reached out -- did  
 11 Dr. -- let's take them one at a time.  
 12 Did Mr. Leebaw, your boss,  
 13 tell you that the FDA had a concern after  
 14 that meeting of the possibility of a risk  
 15 of ovarian cancer could not be dismissed,  
 16 did he tell you that at any time that you  
 17 can recall?  
 18 MS. FRAZIER: Objection to  
 19 form. Foundation.  
 20 THE WITNESS: I have no  
 21 memory of any discussion like  
 22 that.  
 23 BY MR. TISI:  
 24 Q. Did Mr. O'Shaughnessy, to

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1 whom you sent your inquiry in 1998, say,  
 2 you know, we had this follow-up with the  
 3 FDA and the possibility of the risk of  
 4 ovarian cancer could not be totally  
 5 dismissed?  
 6 MS. FRAZIER: Objection to  
 7 form. And I'll instruct the  
 8 witness not to respond to the  
 9 extent that responding to  
 10 questions about what  
 11 Mr. O'Shaughnessy, who was inhouse  
 12 counsel at Johnson & Johnson said  
 13 to Mr. McKeegan is attorney/client  
 14 privileged.  
 15 And to the extent it  
 16 requires him to disclose such  
 17 communications, I'll instruct him  
 18 not to answer.  
 19 MR. TISI: Well, I don't  
 20 think that it does, but let me see  
 21 if I can --  
 22 BY MR. TISI:  
 23 Q. Do you ever remember  
 24 Mr. O'Shaughnessy calling you and talking

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1 about his involvement with the talc  
2 symposium?  
3 MS. FRAZIER: You're just  
4 asking -- wait a minute. You're  
5 just asking about the fact of,  
6 rather than the content?  
7 MR. TISI: Correct.  
8 Correct.  
9 MS. FRAZIER: Okay.  
10 MR. TISI: Let's just take  
11 it one piece at a time, Kat.  
12 BY MR. TISI:  
13 Q. Do you ever remember  
14 Mr. O'Shaughnessy, in response to your  
15 question that he contact you in 1998,  
16 call you and say -- tell you that he was  
17 at the talc symposium and received  
18 information about the FDA following that  
19 symposium?  
20 MS. FRAZIER: Object to  
21 form.  
22 THE WITNESS: I have no  
23 memory of any such discussions.  
24 BY MR. TISI:

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1 Q. Do you ever remember  
2 Mr. Hopkins or Dr. Hopkins calling you  
3 and telling you that the FDA's impression  
4 after the meeting that you used in your  
5 statement to the press and to the  
6 shareholders is that the possibility of  
7 risk of ovarian cancer cannot be totally  
8 dismissed?  
9 MS. FRAZIER: Objection to  
10 form.  
11 THE WITNESS: I have no  
12 memory of any discussions with  
13 John Hopkins at all.  
14 BY MR. TISI:  
15 Q. And we -- and do you know  
16 whether or not, in 1998, when you spoke  
17 to the CTFA representative Ms. Malbin,  
18 whether or not she said, you know, we  
19 received a call -- we made a call to the  
20 FDA and they raised that there was a  
21 possibility of a risk of ovarian cancer  
22 in 1994 that could not be totally  
23 dismissed?  
24 MS. FRAZIER: Objection to

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1 form.  
2 THE WITNESS: I do not  
3 recall any specific conversations  
4 I had with Irene Malbin during  
5 that time.  
6 BY MR. TISI:  
7 Q. But in any event, your  
8 statement was never changed to include  
9 this information, was it?  
10 MS. FRAZIER: Objection to  
11 form.  
12 THE WITNESS: Our statement  
13 would have been evaluated by the  
14 experts at Johnson & Johnson and  
15 they would have used their  
16 knowledge to provide information  
17 back to me that I could then use  
18 to answer questions from the  
19 media.  
20 BY MR. TISI:  
21 Q. Okay. That wasn't my  
22 question.  
23 A. That was my answer.  
24 Q. No, it's not -- you need to

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1 answer my question.  
2 My question is, was the  
3 statement that you prepared or that was  
4 being used in 1998, 1999 and 2000, ever  
5 tweaked, to use your phrase, to indicate  
6 that the FDA continued to have concerns  
7 about the possibility of the risk of  
8 ovarian cancer?  
9 MS. FRAZIER: Objection to  
10 form.  
11 BY MR. TISI:  
12 Q. Was it ever --  
13 MS. FRAZIER: Objection to  
14 form.  
15 THE WITNESS: We would have  
16 had these statements evaluated  
17 periodically based on things that  
18 would have been occurring at the  
19 time. That was the usual  
20 practice.  
21 From what you've just shown  
22 me about the statement between  
23 '98, '99 and 2000, the statements  
24 appear to be largely the same.

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1 BY MR. TISI:  
2 Q. Okay. And they did not  
3 include any suggestion the FDA had  
4 concern about the risk of ovarian cancer  
5 either as reflected in the e-mail that  
6 you had from 1998 or as reflected in this  
7 memorandum to the people who you  
8 requested information from, true?  
9 MS. FRAZIER: Objection to  
10 form.  
11 THE WITNESS: According to  
12 the -- what you showed me from the  
13 statements, the statements only  
14 talk about the FDA in the specific  
15 context.  
16 BY MR. TISI:  
17 Q. Right. About the talc  
18 symposium, true?  
19 A. That's correct.  
20 MS. FRAZIER: Objection to  
21 form.  
22 BY MR. TISI:  
23 Q. It doesn't talk about any  
24 follow-up statements that the FDA made

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1 expressing concern about the possibility  
2 of the risk of ovarian cancer, correct?  
3 MS. FRAZIER: Objection to  
4 form.  
5 THE WITNESS: When those  
6 experts evaluated those documents,  
7 if they had concerns about the  
8 current wording of it, they would  
9 have provided that to me --  
10 BY MR. TISI:  
11 Q. Right.  
12 A. -- and we would have  
13 adjusted it appropriately.  
14 Q. Right. But you don't even  
15 remember whether they even got back to  
16 you, do you?  
17 A. No, that was 20-something  
18 years ago.  
19 MS. FRAZIER: Objection to  
20 form.  
21 BY MR. TISI:  
22 Q. Okay. And we all -- we  
23 agree, I think we can, that the statement  
24 wasn't tweaked at all in 1998, 1999,

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1 correct, to reflect this information?  
2 MS. FRAZIER: Objection to  
3 form.  
4 Same objection.  
5 THE WITNESS: The statement  
6 appears to be largely the same  
7 during those time frames.  
8 BY MR. TISI:  
9 Q. Now, do you know, were you  
10 ever told as a result of this  
11 communication that what apparently John  
12 Bailey at the FDA had with -- in the  
13 media about --  
14 MR. TISI: You could take  
15 that off the screen.  
16 Actually, bring up Exhibit  
17 637.1 again.  
18 BY MR. TISI:  
19 Q. As a result of this  
20 statement that was important enough for  
21 you to forward by the FDA official  
22 expressing concern about the risk of  
23 ovarian cancer, do you know whether or  
24 not anybody ever followed up with the FDA

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1 or made an inquiry of the FDA as to what  
2 their current thinking was, so that you  
3 could amend, if necessary, the -- what  
4 you were telling the press and your  
5 shareholders?  
6 MS. FRAZIER: Objection to  
7 form. Foundation.  
8 THE WITNESS: The -- ask  
9 your question again, please.  
10 BY MR. TISI:  
11 Q. Yeah. My question was, as a  
12 result of this statement by the FDA in  
13 the press about concerns of talc and  
14 ovarian cancer, do you know of anybody at  
15 the company who reached out to find out  
16 exactly what Dr. Bailey said or meant  
17 about his concerns?  
18 MS. FRAZIER: Objection to  
19 form. Foundation.  
20 THE WITNESS: I would have  
21 no memory of that, since it was so  
22 long ago.  
23 BY MR. TISI:  
24 Q. Okay. And would you agree

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1 with me that that would have been one of  
2 the things that you would have expected  
3 as somebody who is the face of J&J  
4 corporate with the media?  
5 MS. FRAZIER: Objection to  
6 form. Foundation.  
7 THE WITNESS: I can't say  
8 what I would have expected. I  
9 don't think -- I don't remember if  
10 we received this call from CBS  
11 News.  
12 BY MR. TISI:  
13 Q. Right. Doesn't matter  
14 whether you received it directly from CBS  
15 News, or you received it from CTFA. What  
16 is important, wouldn't you agree, is  
17 whether the FDA had concerns about the  
18 risk of talc and ovarian cancer, right,  
19 as a subject matter?  
20 MS. FRAZIER: Objection to  
21 form. Foundation.  
22 THE WITNESS: Whether the  
23 FDA had concerns about talc  
24 products, or specifically Johnson

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1 & Johnson products, would not have  
2 been within my area.  
3 BY MR. TISI:  
4 Q. Right.  
5 A. I was specifically charged  
6 with answering questions that we would  
7 have received from the media.  
8 Q. Right. So -- so that being  
9 the case, and I'm accepting you as you --  
10 accepting your answer as you just gave  
11 it -- you being the interface with the  
12 media, would you have expected J&J, the  
13 scientists and regulatory people at J&J,  
14 to speak to the people at the FDA so that  
15 when you are asked these questions, you  
16 can give accurate answers?  
17 MS. FRAZIER: Objection to  
18 form. Foundation.  
19 THE WITNESS: I can't say  
20 what I would have expected at this  
21 time.  
22 I can say that based on what  
23 you're showing me in this e-mail,  
24 that I reached back to two people

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1 who presumably would have had  
2 knowledge of this issue and asked  
3 them if we needed to adjust this  
4 statement.  
5 BY MR. TISI:  
6 Q. Well, it's not just two  
7 people. You copied your boss, Dr. --  
8 Mr. Leebaw, correct, to whom that prior  
9 statement by the FDA that I showed you  
10 from 1994 was sent, correct?  
11 MS. FRAZIER: Objection to  
12 form.  
13 THE WITNESS: No. The --  
14 this was to John Hopkins and John  
15 O'Shaughnessy. Jeff would have  
16 been copied as my supervisor.  
17 BY MR. TISI:  
18 Q. Right. And you got the call  
19 from CTFA, who is the trade organization,  
20 right?  
21 A. Yes.  
22 MR. TISI: I'm going to show  
23 you exhibit number -- and this is  
24 not -- again, this is a document

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1 that is not in your stack, so I'm  
2 going to ask you to bear with me  
3 for a moment.  
4 This is a document dated  
5 February 10, 1998.  
6 Would you please bring up  
7 P1.669.  
8 (Document marked for  
9 identification as Exhibit  
10 P1.669.)  
11 BY MR. TISI:  
12 Q. Now, just for timeline  
13 purposes, the e-mail that we have been  
14 talking about with -- from you to  
15 Mr. Hopkins and John O'Shaughnessy, was  
16 February 13, 1988, correct?  
17 A. Yes.  
18 Q. Okay. So this document is  
19 dated February 10, 1988, three days  
20 before, correct?  
21 A. Correct.  
22 Q. Okay. And this is a  
23 document -- it was not in your file so  
24 I'm not suggesting you would have seen

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1 it. I'm just going to ask you a question  
2 about this.  
3 It says the FDA's Cosmetics  
4 Program. Do you see that?  
5 A. Yes.  
6 Q. And it's prepared by, if you  
7 look at the bottom left, it's prepared by  
8 the FDA, correct?  
9 MS. FRAZIER: Objection to  
10 form. Foundation.  
11 BY MR. TISI:  
12 Q. The Office of Cosmetics and  
13 Color.  
14 A. That's apparently what this  
15 says.  
16 Q. And I'm going to show you a  
17 very specific page. And I will suggest  
18 to you this came from the PCPC, or CTFA,  
19 the folks who called you, to let you know  
20 about Dr. Bailey's FDA statement.  
21 If you go to page -- the  
22 document that has exhibit -- 509 Bates at  
23 the end.  
24 MR. TISI: I think it's

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1 about six pages in, Dan. Seven  
2 pages.  
3 Go back. Back. Right  
4 there. Next page.  
5 BY MR. TISI:  
6 Q. It has a statement on talc  
7 in this FDA document, do you see that?  
8 A. Yes, I see that.  
9 Q. It says, and we'll read it  
10 together. "Talc is a commonly used  
11 ingredient used in a variety of cosmetic,  
12 drugs, and medical device preparations."  
13 Do you see that?  
14 A. Yes.  
15 Q. Okay. Next statement:  
16 "Perineal talc has been linked to  
17 increased risk of ovarian cancer."  
18 Do you see that?  
19 A. I see that.  
20 Q. It says, "FDA sponsored a  
21 workshop on talc safety in 1994."  
22 Do you see that?  
23 A. Yes.  
24 Q. Okay. And, of course, your

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1 statement to the press refers to the  
2 workshop on talc safety from 1994,  
3 correct?  
4 A. Yes.  
5 Q. Okay. And it says,  
6 "Additional data ... since then further  
7 suggests a health hazard."  
8 Do you see that?  
9 MS. FRAZIER: Objection to  
10 form. Foundation.  
11 THE WITNESS: I see that  
12 sentence.  
13 BY MR. TISI:  
14 Q. And did anybody -- now we  
15 have -- we talked about before, the 1994  
16 fax memorandum sent to Mr. Leebaw and  
17 Mr. O'Shaughnessy and Mr. Hopkins from  
18 CTFA about a call with the FDA expressing  
19 concern, still expressing concern after  
20 that meeting at that workshop about talc  
21 and ovarian cancer.  
22 You remember that, right?  
23 MS. FRAZIER: Objection to  
24 form.

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1 THE WITNESS: I remember  
2 that memo.  
3 BY MR. TISI:  
4 Q. Okay. And now we have in  
5 1998, the FDA referring to that workshop  
6 in 1994 and saying, "Additional data  
7 obtained since then further suggests a  
8 health hazard," correct?  
9 MS. FRAZIER: Objection to  
10 form. Foundation.  
11 THE WITNESS: I see that  
12 sentence in this document.  
13 BY MR. TISI:  
14 Q. Right. And you were made  
15 aware of a statement that the FDA through  
16 Dr. Bailey made to CBS that there was  
17 still a concern about talc and ovarian  
18 cancer, true?  
19 MS. FRAZIER: Objection to  
20 form.  
21 BY MR. TISI:  
22 Q. At the FDA?  
23 A. I recall that in the e-mail  
24 you showed me.

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1 Q. All right. And these three  
2 documents, the one from 1994, your e-mail  
3 from 1998, and this document, would  
4 suggest, at least would you agree with  
5 me, suggests that FDA still had concerns?  
6 MS. FRAZIER: Objection to  
7 form. Foundation.  
8 THE WITNESS: I can't  
9 speculate on what the FDA was  
10 doing.  
11 BY MR. TISI:  
12 Q. You can't read -- that's  
13 exactly what the e-mail you wrote said,  
14 right?  
15 MS. FRAZIER: Objection to  
16 form. Foundation.  
17 THE WITNESS: I can only go  
18 by what you're showing me here. I  
19 cannot remember exactly what was  
20 going on at this time. I would  
21 have no idea what would have been  
22 going on within the FDA.  
23 BY MR. TISI:  
24 Q. My question to you, Mr. --

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1 Mr. McKeegan, in public statements you  
2 made until you left the company, you left  
3 this position in 2001, did not tell the  
4 public that the FDA still had concerns  
5 about talc and ovarian cancer, did it?  
6 MS. FRAZIER: Objection to  
7 form.  
8 THE WITNESS: Our statements  
9 would have been based on the best  
10 information that we would have had  
11 from the Johnson & Johnson  
12 experts.  
13 MR. TISI: Okay. Move to  
14 strike.  
15 BY MR. TISI:  
16 Q. My question is, you looking  
17 at that statement, and we can bring --  
18 MR. TISI: Let's bring up  
19 exhibit -- let's bring up  
20 Exhibit 637. Look at Page 2, the  
21 Statement on Talcum Powder.  
22 BY MR. TISI:  
23 Q. Can you tell me where, as  
24 the guy who was responsible for

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1 interfacing with the media and approving  
2 statements to the shareholders, where in  
3 this statement that it indicates that the  
4 FDA continued to have concerns about talc  
5 and ovarian cancer and that there is a  
6 suggestion of a health hazard?  
7 MS. FRAZIER: Objection to  
8 form.  
9 BY MR. TISI:  
10 Q. Is there anything in here  
11 that would suggest that to you?  
12 MS. FRAZIER: Objection to  
13 form. Foundation.  
14 THE WITNESS: This statement  
15 would have been based on the best  
16 information we had from the  
17 experts at Johnson & Johnson.  
18 BY MR. TISI:  
19 Q. I'm not asking --  
20 A. If the FDA was going to be  
21 making information available about how  
22 they felt about talc, I presume that they  
23 would have done so.  
24 Q. Okay. Well, you are

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1 referring to the FDA and that workshop in  
2 this statement, correct?  
3 A. As we've stated before, that  
4 is in this statement.  
5 Q. Okay. And so my question  
6 is, having referred to the 1994 workshop  
7 and the FDA, you now -- I have now shown  
8 you three pieces of information that the  
9 FDA was -- still remained concerned.  
10 So if you wanted to be  
11 complete, that information about the  
12 FDA's concern is not in your corporate  
13 statement, was it?  
14 MS. FRAZIER: Objection to  
15 form. Foundation.  
16 THE WITNESS: Our corporate  
17 statement would have been based on  
18 the best information available to  
19 us from Johnson & Johnson's  
20 experts.  
21 BY MR. TISI:  
22 Q. Sir, with all due respect,  
23 you are not answering my question. Okay?  
24 I'm not asking you what it's based on.

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1 I'm asking you what it says.  
 2 Is there anything -- can you  
 3 point to me a statement in this statement  
 4 on talcum powder that was being used by  
 5 you and J&J corporate in 2000 -- between  
 6 1998 and earlier and 2000, that reflects  
 7 any suggestion that the FDA had concern  
 8 about the risk?  
 9 MS. FRAZIER: Objection to  
 10 form. Foundation.  
 11 BY MR. TISI:  
 12 Q. And if your answer is yes,  
 13 I'd like you to tell me where it says  
 14 that.  
 15 MS. FRAZIER: Objection to  
 16 form. Foundation.  
 17 THE WITNESS: Our statement  
 18 would have been based on the best  
 19 available information that we had  
 20 to us from the Johnson & Johnson  
 21 experts who would have reviewed  
 22 these statements and provided any  
 23 input to us.  
 24 BY MR. TISI:

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1 Q. That's not my question. My  
 2 question is not what it's based on. I'm  
 3 asking you what it says.  
 4 Would you agree with me that  
 5 this statement doesn't -- which refers to  
 6 the FDA, does not reflect any concern  
 7 that the FDA had about talc and ovarian  
 8 cancer and the science?  
 9 MS. FRAZIER: Objection to  
 10 form. Foundation.  
 11 THE WITNESS: Our statement  
 12 would have been a statement from  
 13 Johnson & Johnson. It would have  
 14 been a statement based on the best  
 15 information we had available to us  
 16 from the experts at Johnson &  
 17 Johnson.  
 18 BY MR. TISI:  
 19 Q. Okay. And it makes no  
 20 reference to the documents or the  
 21 communications that -- that we just  
 22 talked about, that the FDA continued to  
 23 have concerns, does it?  
 24 MS. FRAZIER: Objection to

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1 form. Foundation.  
 2 THE WITNESS: It provides  
 3 the best information that we had  
 4 available to us from the experts  
 5 at Johnson & Johnson.  
 6 BY MR. TISI:  
 7 Q. And so if the FDA -- if  
 8 you're referring to the FDA and the  
 9 workshop in this statement, you don't  
 10 think it's fair that -- that the media  
 11 and the public also needs to know that  
 12 the FDA continued to have concerns, you  
 13 don't think that that's necessary?  
 14 MS. FRAZIER: Objection to  
 15 form. Foundation.  
 16 THE WITNESS: This again is  
 17 a statement from Johnson &  
 18 Johnson, based on the best  
 19 information that we had available  
 20 to us from Johnson & Johnson's  
 21 experts.  
 22 BY MR. TISI:  
 23 Q. Sir, who were those experts?  
 24 A. I can only go by what you

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1 are showing me in terms of the e-mails  
 2 that would have been coming from those  
 3 times.  
 4 So the people on those  
 5 e-mails presumably would have been --  
 6 included the experts who had helped to  
 7 develop this statement originally and who  
 8 would have been reviewing it after this.  
 9 Q. Okay. So that would have  
 10 been, among other people, the company  
 11 lawyer, right?  
 12 MS. FRAZIER: Objection to  
 13 form.  
 14 THE WITNESS: John  
 15 O'Shaughnessy is copied on these  
 16 for review, as well as other  
 17 people.  
 18 BY MR. TISI:  
 19 Q. Okay. And you saw, I showed  
 20 you, an e-mail where these other people  
 21 knew and understood that J -- the  
 22 company -- that the FDA still had concern  
 23 of the possibility of talc and ovarian  
 24 cancer even after the 1994 workshop

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1 referred to in this document, true?  
 2 MS. FRAZIER: Objection to  
 3 form. Foundation.  
 4 THE WITNESS: I was not at  
 5 J&J at that time. And I have no  
 6 knowledge of that document.  
 7 BY MR. TISI:  
 8 Q. I didn't ask you that  
 9 question.  
 10 I'm asking you, you reached  
 11 out to the people who did get that  
 12 document and they never told you that,  
 13 did they?  
 14 MS. FRAZIER: Objection to  
 15 form. Foundation.  
 16 THE WITNESS: Any statements  
 17 that we would have made from  
 18 corporate communications would  
 19 have gone back to the experts for  
 20 their review, and if there was  
 21 changes to be made, they would  
 22 have provided that information  
 23 back to us.  
 24 BY MR. TISI:

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1 Q. And they didn't do that, did  
 2 they? They provided no --  
 3 MS. FRAZIER: Objection to  
 4 form.  
 5 BY MR. TISI:  
 6 Q. They provided no tweaks to  
 7 your corporate statement that would have  
 8 reflected that the FDA not only had  
 9 concerns, but they thought that  
 10 information gained since the 1994  
 11 workshop suggested a health hazard,  
 12 correct?  
 13 MS. FRAZIER: Objection to  
 14 form. Foundation.  
 15 THE WITNESS: Based on what  
 16 you've shown me here, the  
 17 statement appears to be the same  
 18 from '98 through 2000.  
 19 BY MR. TISI:  
 20 Q. And doesn't reflect the  
 21 documents that I showed you about the FDA  
 22 having concern about talc being a health  
 23 hazard. True?  
 24 MS. FRAZIER: Objection to

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1 form. Foundation.  
 2 THE WITNESS: I would have  
 3 no direct knowledge about what  
 4 information the Johnson & Johnson  
 5 experts would have used to  
 6 evaluate these statements.  
 7 BY MR. TISI:  
 8 Q. Sir, I didn't ask you that.  
 9 I'm asking you as the guy  
 10 who provided these statements, spoke to  
 11 the press, who approved information for  
 12 the shareholders, who participated with  
 13 the CTFA on crafting their statement on  
 14 talc and ovarian cancer. There is  
 15 nothing in any of the materials that we  
 16 reviewed that you were involved with that  
 17 reflect -- that reflected after the 1994  
 18 workshop the FDA continued to have  
 19 concerns, there is nothing, isn't there?  
 20 MS. FRAZIER: Objection to  
 21 form. Foundation.  
 22 THE WITNESS: Johnson &  
 23 Johnson's experts, I'm sure, would  
 24 have been using a great many

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1 things in order to evaluate the  
 2 accuracy of the statements. But I  
 3 would have no direct knowledge of  
 4 what they were being used to  
 5 evaluate.  
 6 BY MR. TISI:  
 7 Q. But in any event, your media  
 8 statements to the media upon inquiry by  
 9 anybody would be talc is safe and the  
 10 workshop convened by the FDA in 1994  
 11 showed there was no connection. True?  
 12 MS. FRAZIER: Objection to  
 13 form.  
 14 THE WITNESS: We had gone  
 15 through the statement several  
 16 times. So the statement is what  
 17 the statement is.  
 18 BY MR. TISI:  
 19 Q. Okay. But you --  
 20 A. And it doesn't appear to  
 21 have changed between '98 and 2000.  
 22 Q. It sounds like you refuse to  
 23 say what the statement says.  
 24 The statement says that

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1 there is no hazards to health that have  
2 been demonstrated in connection with the  
3 normal use of talc. True?  
4 MS. FRAZIER: Objection to  
5 form.  
6 THE WITNESS: It says, "The  
7 workshop concluded" --  
8 BY MR. TISI:  
9 Q. Right.  
10 A. -- "no hazards to health has  
11 been demonstrated in connection with the  
12 normal use of cosmetic talc."  
13 Q. And you saw -- we just  
14 showed you three pieces of information,  
15 including one that you got in real time  
16 in 1998, that would suggest that the FDA  
17 didn't agree with what the workshop  
18 concluded, true?  
19 MS. FRAZIER: Objection to  
20 form. Foundation.  
21 THE WITNESS: I would have  
22 no direct knowledge about what the  
23 FDA was considering or anything  
24 like that --

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1 BY MR. TISI:  
2 Q. I didn't ask you --  
3 A. -- so I can't answer your  
4 question.  
5 MS. FRAZIER: Hey. Hey,  
6 Chris, Chris, let's stop here.  
7 You are badgering the witness.  
8 He's told you --  
9 MR. TISI: How?  
10 MS. FRAZIER: He's told you  
11 numerous times that he does not  
12 have the background to be able to  
13 interpret --  
14 MR. TISI: Kat --  
15 MS. FRAZIER: -- the  
16 documents you're putting up and  
17 trying to have him agree with you.  
18 It's not going to happen.  
19 MR. TISI: Kat, I'm not --  
20 I'm not asking -- Kat, I am not  
21 asking him to interpret --  
22 MS. FRAZIER: You are asking  
23 him to interpret the documents.  
24 MR. TISI: I'm asking him

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1 whether -- I'm asking whether it's  
2 there or not there. Okay? And  
3 it's --  
4 MS. FRAZIER: No, you're  
5 asking him whether or not FDA had  
6 concerns --  
7 MR. TISI: All right. Let  
8 me --  
9 MS. FRAZIER: -- and showing  
10 him the documents and trying to  
11 get him to agree. That is not the  
12 same thing.  
13 MR. TISI: Let me -- okay.  
14 Let me rephrase.  
15 MS. FRAZIER: He does not  
16 have that background. Move on.  
17 MR. TISI: Let me rephrase  
18 the statement.  
19 BY MR. TISI:  
20 Q. Okay. In this statement, is  
21 there anything that would reflect what  
22 the FDA believed after the 1994 workshop?  
23 MS. FRAZIER: Objection to  
24 form. Foundation.

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1 THE WITNESS: The statement  
2 says that the workshop concluded  
3 no hazards to health had been  
4 demonstrated in connection with  
5 the normal use of cosmetic talc.  
6 BY MR. TISI:  
7 Q. And it doesn't reflect any  
8 information about what the FDA was doing  
9 or telling the companies between 1994 and  
10 2000?  
11 MS. FRAZIER: Objection to  
12 form. Foundation.  
13 THE WITNESS: These  
14 statements would have been  
15 reviewed by experts at Johnson &  
16 Johnson. If there was changes to  
17 be made to these statements, I'm  
18 sure they would have made them.  
19 BY MR. TISI:  
20 Q. And so you're refusing to  
21 say whether the statement has any  
22 information after 1994?  
23 MS. FRAZIER: Objection to  
24 form. Foundation.

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1 THE WITNESS: I would have  
2 no knowledge about anything that  
3 would have happened after 1994.  
4 BY MR. TISI:  
5 Q. I guess you --  
6 A. I started at Johnson &  
7 Johnson in 1997.  
8 Q. I did not ask you whether  
9 you had any information after 1994. I'm  
10 asking you whether this statement that  
11 you would read or communicate to people,  
12 has any information after 1994. I'm not  
13 asking what that information would have  
14 been. I'm asking you, is there any  
15 reference to information between 1994 and  
16 2000.  
17 MS. FRAZIER: Objection to  
18 form. Foundation.  
19 We're getting into the same  
20 territory, Chris. You're heading  
21 the same direction, asking him  
22 about knowledge of what the FDA  
23 thinks and what they are doing,  
24 when he's already said a million

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1 times he doesn't have the  
2 knowledge.  
3 MR. TISI: I'm not asking  
4 that -- I am not asking that at  
5 all, Kat, and you know it full  
6 well.  
7 MS. FRAZIER: I can hear it  
8 too. I do know that.  
9 MR. TISI: I'm asking  
10 whether --  
11 MS. FRAZIER: You are  
12 badgering him.  
13 MR. TISI: I am asking --  
14 MS. FRAZIER: You're  
15 bullying him and you're badgering  
16 him. You need to move on.  
17 MR. TISI: He's not  
18 answering -- he is not answering  
19 the question.  
20 MS. FRAZIER: He's -- he's  
21 answering it to the best of his  
22 ability. Just because --  
23 MR. TISI: He is not.  
24 MS. FRAZIER: -- he's not

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1 giving you the sound bites you  
2 want doesn't mean --  
3 MR. TISI: It's not a sound  
4 bite --  
5 MS. FRAZIER: -- he should  
6 answer it the way you want him to.  
7 MR. TISI: I think the sound  
8 bite of him being evasive on this  
9 question is better than if simply  
10 asked the question -- answered the  
11 question.  
12 MS. FRAZIER: No, no.  
13 You're asking him to answer  
14 something he has no knowledge of.  
15 BY MR. TISI:  
16 Q. I'm asking is there any --  
17 this is a statement that you would have  
18 given to the media had a request been  
19 given, correct?  
20 A. If a media request came in,  
21 this appears to be what we were using  
22 from 1998 through 2000, according to what  
23 you have shown me.  
24 Q. And is there anything in

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1 here that refers to any information after  
2 1994?  
3 A. I have no idea --  
4 MS. FRAZIER: Objection to  
5 form. Foundation.  
6 BY MR. TISI:  
7 Q. Okay.  
8 A. I have no idea what people  
9 who would have reviewed this would have  
10 used in order to determine that this  
11 statement was an accurate representation  
12 of Johnson & Johnson, and the best  
13 information that the corporation at its  
14 disposal.  
15 Q. Now, I'm going to turn to --  
16 change my -- to a different topic.  
17 Number -- in your role you  
18 became aware as an employee of J&J  
19 corporate that the medical and scientific  
20 community in this time frame, that there  
21 was some that were suggesting that women  
22 either be told of a potential risk, or  
23 that they be -- it's suggested that they  
24 not use talcum powder products or that

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1 the product even -- they switch to  
 2 cornstarch. You aware of that?  
 3 MS. FRAZIER: Objection to  
 4 form.  
 5 THE WITNESS: I do recall  
 6 some articles about things like  
 7 that.  
 8 MR. TISI: Let's go to  
 9 exhibit number -- Tab Number 48,  
 10 which is Exhibit 640.  
 11 (Document Marked for  
 12 identification as Exhibit  
 13 P1.640.)  
 14 BY MR. TISI:  
 15 Q. Okay. Is this an e-mail  
 16 from you to John O'Shaughnessy, the  
 17 company lawyer, again?  
 18 A. It is to John O'Shaughnessy,  
 19 Catherine Murphy, Michael Chudkowski,  
 20 Nancy Musco, Gary Noble, and Jeff Leebaw.  
 21 Q. And it reflects a  
 22 communication that you had with a media  
 23 outlet regarding talc and ovarian cancer,  
 24 and this is in February of 2000, correct?

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1 MS. FRAZIER: Objection to  
 2 form.  
 3 THE WITNESS: It looks like  
 4 it's an article from February 3rd  
 5 of 2000.  
 6 BY MR. TISI:  
 7 Q. Okay. And the article  
 8 begins on Page 2, and it concerns the  
 9 risk of ovarian cancer.  
 10 Do you see that?  
 11 A. Yes.  
 12 MS. FRAZIER: Objection to  
 13 form.  
 14 BY MR. TISI:  
 15 Q. And underneath it says, "A  
 16 small but significant association between  
 17 the use of talc-containing products and  
 18 one of a kind ovarian cancer has emerged  
 19 from a long-term study Harvard Medical  
 20 School researchers report."  
 21 Do you see that? First  
 22 paragraph?  
 23 A. Yes, I see that.  
 24 Q. In the second paragraph it

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1 says that there is an increase in  
 2 perineal talc use may increase the risk  
 3 of invasive serious ovarian cancer in  
 4 quotes.  
 5 Do you see that?  
 6 MS. FRAZIER: Objection to  
 7 form.  
 8 THE WITNESS: I see that.  
 9 BY MR. TISI:  
 10 Q. And on the second page, the  
 11 first full paragraph it says women who  
 12 used talc had invasive cancer 1.4 times  
 13 larger -- higher than that of women who  
 14 never used it. Do you see that?  
 15 I'm just asking you whether  
 16 you see it, sir.  
 17 A. I'm reading the paragraph.  
 18 Sorry, Chris.  
 19 Q. That's okay.  
 20 A. I'm confused by this.  
 21 It says, "We did not observe  
 22 an overall association with the use of  
 23 talc and epithelial ovarian cancer.  
 24 There was also no elevation in risk among

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1 daily users of perineal talc."  
 2 And then it paraphrases,  
 3 "But women who used talc had a risk of  
 4 invasive cancer 1.4 times higher than  
 5 that of women who never used it."  
 6 Q. Right. So I -- I read that  
 7 statement in correctly, true?  
 8 A. That's the statement that's  
 9 here, yes.  
 10 Q. Okay. And if you go to the  
 11 prior page, it was a recommendation by a  
 12 Dr. Cramer, do you see that?  
 13 And it's the same Dr. Cramer  
 14 we talked about in the article from 1999  
 15 where he says women who apply such  
 16 products to the perineal genital area to  
 17 avoid or reduce sweating, Cramer says.  
 18 "We're talking about an exposure that has  
 19 aesthetic benefits only, he says. So for  
 20 people who say the relationship is not  
 21 strong enough to warrant a warning, I  
 22 come back and say, what's the benefit of  
 23 continued use? My advice is, don't use  
 24 it?"

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1 Do you see that?

2 A. I see that.

3 Q. And then there's a back and

4 forth in this article where you and

5 Dr. Cramer kind of respond and they

6 summarize what you both said.

7 It says, "Cramer recommends

8 that women switch from products

9 containing talc to those with starch,

10 which he says have the same benefits and

11 carry no risks."

12 MR. TISI: Next page please,

13 Dan. Very bottom of the page.

14 Yeah. Third paragraph up.

15 BY MR. TISI:

16 Q. "Cramer recommends that

17 women switch from products containing

18 talc to those with starch, which he says

19 carry" -- "have the same benefits and

20 carry no risk."

21 Do you see that?

22 A. Yes.

23 Q. Okay. And you respond by

24 saying, "John McKeegan, a spokesman for

Page 163

1 Johnson & Johnson, which makes the

2 talc-containing products, says the

3 company 'is taking a very close look at

4 the study."

5 A. I see that.

6 Q. And it says, What to do. It

7 says, "It's your call. Overall, the

8 study says, the risk is small. But if

9 you use a talc product, ask yourself is

10 it worthwhile and whether another product

11 may do the trick."

12 Do you see that?

13 A. It looks like it's

14 presumably from the author.

15 Q. Correct.

16 So now my question is, would

17 you agree with me that, at least this is

18 consistent with what you told me before,

19 that there was some of the medical

20 community who were suggesting that women

21 be told of a potential risk, that they be

22 told not to use talc, and that they

23 switch to cornstarch?

24 MS. FRAZIER: Objection to

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1 form.

2 THE WITNESS: I'm aware that

3 those statements were being made.

4 BY MR. TISI:

5 Q. Okay.

6 THE WITNESS: Can we take a

7 break?

8 MR. TISI: I'm sorry?

9 THE WITNESS: Can we take a

10 break?

11 MR. TISI: Absolutely.

12 THE VIDEOGRAPHER: The time

13 is 12:44 p.m. Off the record.

14 - - -

15 (Whereupon, a luncheon

16 recess was taken.)

17 - - -

18 THE VIDEOGRAPHER: The time

19 is 1:02 p.m. We're on the record.

20 BY MR. TISI:

21 Q. So, Mr. McKeegan, let's see

22 if we can kind of summarize where we were

23 just before we took the break, and then

24 hopefully complete this deposition in the

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1 most efficient way that we can.

2 Before the deposition --

3 before the break, I asked you some

4 questions about whether or not at the

5 time you were the PR -- involved in PR

6 for J&J corporate, you were aware of

7 recommendations that had been floated in

8 the press, in the medical community,

9 about either warning women, instructing

10 women not to use talcum powder, or

11 perhaps switching to cornstarch or even

12 replacing cornstarch.

13 Do you remember that

14 testimony?

15 A. I do.

16 MS. FRAZIER: Objection to

17 form.

18 BY MR. TISI:

19 Q. And we showed you an

20 example, Exhibit Number 640, which is an

21 article that you commented on that

22 discussed some of those things, correct?

23 A. Yes.

24 MS. FRAZIER: Objection to

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1 form.  
2 BY MR. TISI:  
3 Q. Okay. I'd like to show you  
4 Tab 11 which is a document, it's Exhibit  
5 Number 603. It's an e-mail from  
6 Ms. Malbin at CTFA, to, among other  
7 people, yourself, dated December 7th.  
8 (Document marked for  
9 identification as Exhibit  
10 P1.603.)  
11 BY MR. TISI:  
12 Q. Do you see that?  
13 A. Yes.  
14 Q. And this is an e-mail to you  
15 and Ms. Colamarino at Consumer Products,  
16 as well as other people in different  
17 companies that fall under the PCPC or  
18 CTFA umbrella, correct?  
19 A. Yes.  
20 Q. Luzenac, Avon, Unilever,  
21 L'Oreal, et cetera. Is that true?  
22 A. Yeah, apparently also  
23 Bristol-Myers Squibb is on this.  
24 Q. Correct.

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1 The point being -- the point  
2 being this was distributed to those  
3 members of CTFA that were involved in  
4 talc issues, correct?  
5 MS. FRAZIER: Objection to  
6 form.  
7 THE WITNESS: I haven't read  
8 this yet so I will take what you  
9 say about it.  
10 BY MR. TISI:  
11 Q. Okay. Well, the subject  
12 matter is talc  
13 assessment/Nichols-Dezenhall.  
14 A. Okay, yes.  
15 Q. Okay. And it says, "I think  
16 you will fine" -- I think that means  
17 find -- "the Nichols-Dezenhall assessment  
18 of the talc 'landscape' very helpful and  
19 informative. Irene."  
20 Do you see that?  
21 A. Yes.  
22 Q. And just for context, this  
23 is on the eve of -- and we'll talk about  
24 this in a moment. In mid December 2000

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1 there was a meeting of what was called  
2 the National Toxicology Program which was  
3 considering listing talc as a possible  
4 human carcinogen, correct?  
5 A. I believe --  
6 MS. FRAZIER: Objection to  
7 form.  
8 THE WITNESS: I believe it  
9 was not possible but potential,  
10 was the -- is the correct thing,  
11 but it's been a while.  
12 BY MR. TISI:  
13 Q. I think the word is  
14 "reasonably expected." But we'll talk  
15 about that in a moment.  
16 But in any event, this is  
17 December 7th. And I believe that meeting  
18 was the 13th or 14th of December, so this  
19 would have been before that, true?  
20 A. Yes.  
21 MS. FRAZIER: Objection to  
22 form.  
23 BY MR. TISI:  
24 Q. All right. So -- and CTFA,

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1 you were aware were -- was involved in  
2 preparing for that meeting in mid  
3 December of 2020 (sic), correct?  
4 MS. FRAZIER: Objection to  
5 form.  
6 THE WITNESS: It -- I'm kind  
7 of reading this as we're  
8 discussing, so I'm --  
9 BY MR. TISI:  
10 Q. Yeah, I'm sorry, maybe --  
11 maybe -- you can read it certainly for  
12 sure, but I'm just trying to set the  
13 table as to where this kind of fits in in  
14 the -- kind of the constellation of what  
15 we are talking about here, right?  
16 So this document was sent to  
17 you and others on -- as the National  
18 Toxicology Program was considering --  
19 whatever question you were considering,  
20 we'll get the exact language in a moment,  
21 about talc and ovarian cancer.  
22 A. That sounds right.  
23 MS. FRAZIER: Objection to  
24 form.

<p style="text-align: right;">Page 170</p> <p>1 BY MR. TISI:</p> <p>2 Q. All right. And it's dated</p> <p>3 December 7, 2000, and it kind of tries to</p> <p>4 summarize the kinds of things that were,</p> <p>5 at that point, being said, the landscape,</p> <p>6 do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And for example, and</p> <p>9 it talks about -- and you can certainly</p> <p>10 read it for sure, but I'm going to pick</p> <p>11 you out some things and ask you some</p> <p>12 questions.</p> <p>13 But it's consistent with</p> <p>14 what you told me before, that at the time</p> <p>15 in 2000, there were various suggestions</p> <p>16 about what to do to protect women</p> <p>17 prophylactically on the possibility or</p> <p>18 probability, or however you want to</p> <p>19 characterize it, of talc and ovarian</p> <p>20 cancer.</p> <p>21 And it includes the kinds of</p> <p>22 things we have been talking about.</p> <p>23 Switching to cornstarch. Warnings.</p> <p>24 Instructions. Those kinds of things.</p>	<p style="text-align: right;">Page 172</p> <p>1 substituting cornstarch-based products</p> <p>2 that contain no talc."</p> <p>3 Do you see that?</p> <p>4 A. I see that.</p> <p>5 Q. Okay. And it says -- and</p> <p>6 referring to the study, I think, that we</p> <p>7 were talking about before in the article</p> <p>8 that you commented on, it says, "The most</p> <p>9 recent publication on this topic, a</p> <p>10 prospective study (considered to</p> <p>11 generally be the most informative) found</p> <p>12 no effect on ovarian cancer overall but a</p> <p>13 40 percent increase ... in one type,</p> <p>14 invasive serous cancer."</p> <p>15 Do you see that?</p> <p>16 MS. FRAZIER: Objection to</p> <p>17 form.</p> <p>18 THE WITNESS: I see that.</p> <p>19 BY MR. TISI:</p> <p>20 Q. Okay. And let's -- on the</p> <p>21 next page it says the Colorado Ovarian</p> <p>22 Cancer Resource at the very top of the</p> <p>23 page. It says, "Several studies have</p> <p>24 examined the relationship between talcum</p>
<p style="text-align: right;">Page 171</p> <p>1 True?</p> <p>2 MS. FRAZIER: Objection to</p> <p>3 form. Foundation.</p> <p>4 THE WITNESS: There were</p> <p>5 discussions along those lines, I'm</p> <p>6 sure.</p> <p>7 BY MR. TISI:</p> <p>8 Q. Okay. So for example, the</p> <p>9 first one is a doctor who we've been</p> <p>10 talking about periodically, is</p> <p>11 Dr. Cramer, Harvard professor of</p> <p>12 obstetrics and gynecology, member of the</p> <p>13 research team whose study appeared in the</p> <p>14 2/1/2000 issue of the National Cancer</p> <p>15 Institute, recommends that women switch</p> <p>16 from talc to cornstarch. Do you see</p> <p>17 that?</p> <p>18 A. I see that.</p> <p>19 Q. All right. The advocacy</p> <p>20 community, if you go down three or four,</p> <p>21 it says the American Cancer Society,</p> <p>22 "Website states, 'Until additional</p> <p>23 information is available, women may wish</p> <p>24 to consider avoiding these products or</p>	<p style="text-align: right;">Page 173</p> <p>1 powder and cancer of the ovary. Findings</p> <p>2 are mixed, with some studies reporting a</p> <p>3 slightly increased risk and some</p> <p>4 reporting no association. Until</p> <p>5 additional information is available,</p> <p>6 women may wish to consider avoiding these</p> <p>7 products or substituting cornstarch-based</p> <p>8 powders with no talc."</p> <p>9 Do you see that?</p> <p>10 A. I see that.</p> <p>11 MS. FRAZIER: Objection to</p> <p>12 form.</p> <p>13 BY MR. TISI:</p> <p>14 Q. Okay. The Gilda Radner</p> <p>15 Familial Ovarian Cancer Registry. "The</p> <p>16 website states, 'The following things may</p> <p>17 increase your chances of getting ovarian</p> <p>18 cancer.'"</p> <p>19 And it lists use of talcum</p> <p>20 powder on the genital area. Do you see</p> <p>21 that?</p> <p>22 MS. FRAZIER: Objection to</p> <p>23 form.</p> <p>24 THE WITNESS: I see that.</p>

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1 BY MR. TISI:  
2 Q. Okay. But the point being,  
3 and I think we agreed before, that these  
4 are the kinds of things that were being  
5 actively discussed in a community that at  
6 least you were aware of at the time,  
7 correct?  
8 MS. FRAZIER: Objection to  
9 form.  
10 THE WITNESS: I'm not aware  
11 of these things specifically. But  
12 I was aware of the general issues.  
13 BY MR. TISI:  
14 Q. Okay. Okay. So -- okay.  
15 MR. TISI: Let's put that  
16 document aside for a moment.  
17 BY MR. TISI:  
18 Q. And let's talk about the  
19 NTP, which is the National Toxicology  
20 Program that we mentioned before that  
21 was -- there was a meeting in mid  
22 December in 2000 -- in 2000. Do you  
23 recall that?  
24 A. I recall the meeting. I

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1 don't recall the date.  
2 Q. Okay. We'll find that out  
3 in a moment. I think -- I think you'll  
4 find it is the 13th or 14th of December.  
5 But this was something  
6 that -- as -- and we'll look at  
7 documents.  
8 But, generally speaking, you  
9 understood that the National Toxicology  
10 Program, talc had been nominated by the  
11 national -- nominated, that was a  
12 substance that was reasonably anticipated  
13 to be a human carcinogen. Do you  
14 remember that?  
15 MS. FRAZIER: Objection to  
16 form.  
17 THE WITNESS: I recall that  
18 they were going to be evaluating  
19 that question.  
20 BY MR. TISI:  
21 Q. Okay. And that was  
22 something that both J&J corporate and the  
23 talc industry through the CTFA were  
24 concerned about, true?

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1 MS. FRAZIER: Objection to  
2 form. Foundation.  
3 THE WITNESS: That is -- you  
4 know, it would have been a true  
5 statement.  
6 BY MR. TISI:  
7 Q. And -- just give me a  
8 second. I apologize. Having a document  
9 issue.  
10 MR. TISI: Would you go to  
11 Tab 71.  
12 (Document marked for  
13 identification as Exhibit  
14 P1.663.)  
15 BY MR. TISI:  
16 Q. And this is 6 -- P1.663.1.  
17 Okay. Now this is an e-mail  
18 from a person by the name of Owen Rankin  
19 at Consumer Products dated November 17,  
20 2000, to among other people, Sarah  
21 Colamarino who was the PR person at  
22 Consumer Products and John McKeegan who  
23 was the media person for corporate.  
24 True?

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1 A. Among other people, yes.  
2 Q. Okay. Among other people,  
3 including John O'Shaughnessy, the company  
4 lawyer, true?  
5 MS. FRAZIER: Objection to  
6 form.  
7 THE WITNESS: John  
8 O'Shaughnessy is -- John  
9 O'Shaughnessy is there. John  
10 Crisan is there. Colleen Goggins.  
11 Someone named Fritz Grutzner --  
12 BY MR. TISI:  
13 Q. Colleen Goggins -- Colleen  
14 Goggins was a high ranking executive  
15 within the company?  
16 A. I believe -- and I could be  
17 wrong -- but I believe at this time she  
18 was the executive in charge of all -- the  
19 entire consumer products group of  
20 companies worldwide.  
21 Q. Okay. And you aware at one  
22 point Ms. Goggins was kind of in line to  
23 become chairman of the board of J&J?  
24 MS. FRAZIER: Objection to

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1 form.  
2 THE WITNESS: I am not aware  
3 of that.  
4 BY MR. TISI:  
5 Q. All right. So in the -- in  
6 this e-mail, it says, "Attached is an  
7 agenda background document for Monday's  
8 discussion on talc. Please review the  
9 backgrounder before the meeting."  
10 Do you see that?  
11 A. Yes. I see that.  
12 Q. And this refers -- and one  
13 of the things I'm going to try to do is  
14 try to keep track of dates here because I  
15 think for this next series of questions,  
16 dates may matter.  
17 So this is an e-mail dated  
18 November 17th, and it's circulating a  
19 background document for a meeting of  
20 these corporate officials for both J&J  
21 corporate and J&J Consumer Products, that  
22 was going to occur on Monday, the 20th of  
23 November.  
24 Is that correct?

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1 A. I see that, yes.  
2 Q. If you go to the next page,  
3 there was an agenda. And the agenda  
4 would be "Background on NTP," which is  
5 something you were going to be presenting  
6 on.  
7 Do you see that?  
8 A. I see that.  
9 Q. Okay. And at the very  
10 bottom, Number 5, is a U.S. Positioning  
11 Statement by Sarah Colamarino who is your  
12 counterpart at Consumer Products.  
13 A. I see that.  
14 Q. Okay. So both you and  
15 Ms. Colamarino were both going to be  
16 presenting both on the background of the  
17 NTP and what the positioning would be  
18 about talc and -- talc issues, correct?  
19 MS. FRAZIER: Objection to  
20 form.  
21 THE WITNESS: According to  
22 this agenda, I was presenting on  
23 the background of the National  
24 Toxicology Program, and I don't

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1 know what U.S. Positioning  
2 Statement is, but that's what  
3 Sarah is down as.  
4 BY MR. TISI:  
5 Q. We'll certainly be talking  
6 about that in a moment.  
7 The next page is a  
8 background on the National Toxicology  
9 Program, which is the topic you were  
10 presenting on. Do you see that?  
11 A. I see that.  
12 Q. It says, if you go down to  
13 the middle of the page, and this is why I  
14 said we're going to get into what they  
15 exactly were considering, the NTP.  
16 "The Report groups entries  
17 in two categories:  
18 "Known to be a human  
19 carcinogen."  
20 And, "Reasonably anticipated  
21 to be a human carcinogen."  
22 And, "Talc is under  
23 consideration for the latter category  
24 based on inhalation studies and perineal

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1 use studies," correct?  
2 A. That is what the document  
3 says, yes.  
4 Q. Okay. And it says talc --  
5 when we say perineal use, we're talking  
6 about for feminine hygiene correct?  
7 MS. FRAZIER: Objection to  
8 form.  
9 THE WITNESS: I actually  
10 have no idea.  
11 BY MR. TISI:  
12 Q. Okay. Well, we'll talk  
13 about that in a minute.  
14 And it says -- it says, if  
15 you go down to the bottom, the "NTP Board  
16 of Scientific Counselors, Report on  
17 Carcinogens Subcommittee" was being held  
18 on December 14th, 15th, and 16th in  
19 Washington D.C.  
20 MS. FRAZIER: Chris, you got  
21 the dates wrong. Not that it  
22 matters, but --  
23 MR. TISI: 13th, 14th, and  
24 15th, excuse me. I apologize.

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1 THE WITNESS: I see that.  
 2 BY MR. TISI:  
 3 Q. Okay. So we asked before  
 4 whether or not there was -- the meeting  
 5 was scheduled for mid December and we  
 6 have three dates here, 13, 14, and 15.  
 7 Would you agree, because  
 8 this would have been the topic you were  
 9 presenting on, that would have been the  
 10 time frame?  
 11 MS. FRAZIER: Objection to  
 12 form.  
 13 THE WITNESS: That  
 14 appears -- that -- it looks like  
 15 the dates, according to this  
 16 document, yes.  
 17 BY MR. TISI:  
 18 Q. And on the back page, it  
 19 indicates the Impact Report on  
 20 Carcinogens.  
 21 Actually the brief summary  
 22 of the scientific data is below, do you  
 23 see that?  
 24 A. Yes.

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1 Q. And you'll see again, if you  
 2 look at the second -- feel free to read  
 3 it if you -- if you want.  
 4 It talks about the 1974  
 5 (sic) panel review co-sponsored by the  
 6 FDA?  
 7 A. Yes, I see that.  
 8 Q. It doesn't -- it doesn't  
 9 talk at all about the FDA's evolving  
 10 position since 1994 that we talked about  
 11 before the break, does it?  
 12 MS. FRAZIER: Objection to  
 13 form. Foundation.  
 14 THE WITNESS: This only  
 15 appears to be talking about the  
 16 unanimous conclusion after the  
 17 1994 panel review.  
 18 BY MR. TISI:  
 19 Q. Okay. So it doesn't include  
 20 for example -- I showed you a document  
 21 from 1998 where the FDA had concluded  
 22 that -- that information since the  
 23 meeting indicated that talc was a  
 24 potential health hazard, it doesn't

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1 include that information, does it?  
 2 MS. FRAZIER: Objection to  
 3 form. Foundation.  
 4 THE WITNESS: It does talk  
 5 in the last paragraph there of the  
 6 2000 -- February 2000 study.  
 7 BY MR. TISI:  
 8 Q. Right.  
 9 A. And the modest elevation of  
 10 risk for ever talc use.  
 11 Q. Okay. All right. And so --  
 12 and so it was, just to kind of capsuleize  
 13 where we are right now.  
 14 This is -- you were  
 15 preparing for a meeting of  
 16 representatives of both J&J corporate and  
 17 J&J Consumer Products on the 20th of  
 18 November for an NTP meeting that was  
 19 happening in mid December. True?  
 20 MS. FRAZIER: Objection to  
 21 form.  
 22 THE WITNESS: That appears  
 23 to be the timeline.  
 24 BY MR. TISI:

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1 Q. Okay. And among other  
 2 things, there was going to be a  
 3 presenting by Ms. Colamarino a  
 4 position -- U.S. positioning statement.  
 5 MS. FRAZIER: Objection to  
 6 form.  
 7 BY MR. TISI:  
 8 Q. Correct?  
 9 A. That is according to the  
 10 agenda.  
 11 Can I ask who wrote this  
 12 background on the National Toxicology  
 13 Program? I don't remember ever  
 14 writing this --  
 15 Q. I don't know. But it  
 16 says -- it says you were actually  
 17 presenting on the question.  
 18 A. Right, but I don't ever  
 19 remember writing this.  
 20 Q. Okay. I understand. But  
 21 you are -- it says this is something you  
 22 were prepared to present, right?  
 23 A. That's what the agenda says,  
 24 yeah. I don't remember writing this

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1 document at all.

2 Q. And attached -- and attached

3 is a document that says background on the

4 National Toxicology Program, right?

5 A. This may have been provided

6 by somebody else. I don't remember ever

7 writing it.

8 Q. Okay. But in any event,

9 whether you wrote it or not, this was

10 part of your -- this was part of the

11 topic upon which you were presenting to

12 senior executives at both J&J corporate

13 and Consumer Products, true?

14 MS. FRAZIER: Objection to

15 form.

16 THE WITNESS: I actually

17 don't have any memory about what I

18 would have used to discuss about

19 it. I don't know that I would

20 have been using this, because my

21 role was more about answering

22 questions from the media.

23 BY MR. TISI:

24 Q. Well, at least --

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1 A. I don't know who wrote this.

2 Q. Well, at least the agenda

3 indicates you were tasked with that,

4 right?

5 MS. FRAZIER: Objection to

6 form.

7 THE WITNESS: The agenda

8 says I would be talking about this

9 in general. But I don't know

10 exactly what I would have been

11 talking about for National

12 Toxicology Program.

13 BY MR. TISI:

14 Q. And before the meeting the

15 background on the National Toxicology

16 Program, the topic on -- upon which were

17 you presenting, was circulated to you on

18 that Friday before the Monday meeting?

19 A. Oh, did this come from Owen

20 Rankin?

21 Q. I'm asking you -- yes, we

22 just discussed that. An e-mail from Owen

23 Rankin attaches "the agenda and a

24 background document for Monday's

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1 discussion on talc. Please review the

2 backgrounder before the meeting."

3 A. Okay. So I did not write

4 this. But this is being provided as

5 background.

6 Q. I don't know whether you --

7 John. Mr. McKeegan, I don't know whether

8 or not you wrote it or not.

9 I'm asking you whether this

10 was a topic that you were assigned to

11 discuss at a meeting of --

12 MS. FRAZIER: Hey, Chris,

13 he's trying to understand the

14 document. Let him get his feel

15 for the document. You're kind of

16 arguing with him before he can

17 even --

18 MR. TISI: I'm not arguing

19 with him.

20 MS. FRAZIER: -- put it in

21 context.

22 MR. TISI: I think he's

23 anticipating my questions, and

24 candidly, he's had three,

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1 four months since his last

2 deposition to review documents,

3 and he clearly didn't do it.

4 MS. FRAZIER: Chris, Chris,

5 you know that that's not his duty

6 to get up to speed on everything.

7 He's been gone from the company

8 for 20 years --

9 MR. TISI: So refresh --

10 MS. FRAZIER: He's moved

11 on --

12 MR. TISI: So you prep

13 him --

14 MS. FRAZIER: He is not

15 working for J&J. That is not his

16 job.

17 MR. TISI: So when you

18 prepare him, you show him

19 documents. But we won't -- we

20 won't go there.

21 BY MR. TISI:

22 Q. Okay. I'm not going to fuss

23 with you, doctor -- Mr. McKeegan, here.

24 The truth of the matter is,

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1 just to again put it on a timeline. We  
 2 have Mr. Rankin at Consumer Products  
 3 sending you backgrounder information for  
 4 both -- with a talc agenda and a document  
 5 on the NTP background, on Friday,  
 6 November 17th, for a meeting of what we  
 7 both agree are high officials within J&J  
 8 and -- corporate and J&J Consumer  
 9 Products that were meeting on Monday for  
 10 talc. True?

11 MS. FRAZIER: Objection to  
 12 form.

13 THE WITNESS: That appears  
 14 to be what is in this e-mail, yes.

15 BY MR. TISI:

16 Q. Okay. And this was in  
 17 anticipation of an NTP meeting in mid  
 18 December where the scientific advisors  
 19 were going to answer the question of  
 20 whether or not in their view, looking at  
 21 all the evidence, talc was, according to  
 22 the backgrounder, reasonably anticipated  
 23 to be a human carcinogen.

24 MS. FRAZIER: Objection to

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1 form.

2 THE WITNESS: That is  
 3 correct according to the  
 4 documents, yes.

5 BY MR. TISI:

6 Q. Okay. So this meeting was  
 7 occurring somewhere in the range of three  
 8 to four weeks before the meeting of the  
 9 NTP, right?

10 MS. FRAZIER: Objection to  
 11 form.

12 THE WITNESS: That appears  
 13 to be the correct timeline.

14 BY MR. TISI:

15 Q. Okay. Now let's -- let's  
 16 back up the timeline a bit.

17 MR. TISI: Please go to  
 18 Tab 66, Exhibit 658.  
 19 (Document Marked for  
 20 identification as Exhibit  
 21 P1.658.)

22 BY MR. TISI:

23 Q. Okay. This is an e-mail --  
 24 actually an e-mail string before the

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1 meeting on the 20th, dating November --  
 2 it's dated November 9th, actually. It's  
 3 an e-mail from Kate Triggs at  
 4 Branston-Marsettler, which is a public  
 5 relations firm, correct?

6 A. Burson-Marsteller.

7 Q. Burson. Yes. They are a  
 8 public relations firm, right?

9 A. That is correct.

10 Q. Fair enough. And it's an  
 11 e-mail from the public relations firm --  
 12 and they are involved in things like  
 13 crisis management, those kinds of things  
 14 for companies, correct?

15 MS. FRAZIER: Objection to  
 16 form. Foundation.

17 THE WITNESS: That is, I  
 18 believe, one of the things that  
 19 Burson-Marsteller was known for.  
 20 I don't know what else they were  
 21 doing.

22 BY MR. TISI:

23 Q. Okay. And so you were  
 24 meeting with these public relations

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1 crisis management people, and they  
 2 provided -- they actually had a telephone  
 3 call with you and Ms. Colamarino on the  
 4 8th, correct?

5 And if we go to the second  
 6 page of the document, there's an e-mail  
 7 to Sarah Colamarino, Owen Rankin, and  
 8 John McKeegan. Do you see that?

9 A. Yes.

10 Q. It's dated November 9th. Re  
 11 the talc issue.

12 "Further to our conference  
 13 call on November 8th."

14 Do you see that?

15 A. I do see that.

16 Q. Okay. And who was Owen  
 17 Rankin, by the way?

18 A. I think Owen was the head of  
 19 the consumer products companies in the  
 20 U.S. at this time.

21 Q. And so, you, the public  
 22 relations person for J&J corporate, Sarah  
 23 Colamarino, the head of public relations  
 24 for Consumer Products, and Owen Rankin

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1 who was the head of consumer products  
 2 were meeting with Burson-Marsteller, who  
 3 is involved in crisis management, on  
 4 November 8th, and this memo was  
 5 November 9th regarding talc. True?  
 6 A. I'm just trying to  
 7 double-check. You said our conference  
 8 call itself was on the 8th?  
 9 Q. Well, it says, "Further to  
 10 our conference call on November 8th" --  
 11 "November 8th," correct?  
 12 A. Yes, that's true. I missed  
 13 that, sorry.  
 14 Q. Okay. And "we've developed  
 15 the following documents."  
 16 So the documents that are  
 17 attached here are developed by this  
 18 crisis management public relations firm  
 19 after having spoken to the head of  
 20 consumer products, the PR person at  
 21 consumer products, and the PR person for  
 22 corporate. True?  
 23 MS. FRAZIER: Objection to  
 24 form.

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1 THE WITNESS: That is true.  
 2 BY MR. TISI:  
 3 Q. Okay. And there are three  
 4 things that are attached:  
 5 "A positioning brief for  
 6 discussion with senior management.  
 7 "A summary document for  
 8 quick briefing."  
 9 And, "A draft holding  
 10 statement for use in the U.S."  
 11 A. I see that.  
 12 Q. Okay. So the positioning  
 13 brief was for discussion with senior  
 14 management. True?  
 15 A. I see that.  
 16 Q. Okay. And, in fact, as we  
 17 just outlined before, Owen Rankin sent  
 18 you an e-mail on the 17th, a week later,  
 19 for a meeting on the 20th with senior  
 20 management, true?  
 21 MS. FRAZIER: Objection to  
 22 form.  
 23 THE WITNESS: I don't know  
 24 who the meeting on the 20th was

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1 with. I don't --  
 2 BY MR. TISI:  
 3 Q. Well, let's again go back to  
 4 Exhibit 663, if we could. It's Tab 71.  
 5 And this is for a meeting on  
 6 Monday regarding talc, right?  
 7 A. So you're talking about  
 8 Colleen Goggins as being senior  
 9 management?  
 10 Q. Well, I mean, you said Owen  
 11 Rankin was the head of consumer products,  
 12 right? John Mc -- I mean, these are  
 13 senior people, right?  
 14 A. I remember Colleen. I  
 15 remember Owen. I remember Sarah. And I  
 16 don't know that I remember the rest of  
 17 these people.  
 18 Q. Okay.  
 19 A. So that's why I'm asking.  
 20 Q. Okay. But these are -- the  
 21 ones that you know are senior people,  
 22 true?  
 23 A. That's true.  
 24 Q. Okay. And if you notice,

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1 again, going to the second page of this  
 2 document, there was going to be a  
 3 presentation of a positioning statement  
 4 by Sarah Colamarino.  
 5 A. That is what the agenda  
 6 says.  
 7 Q. Okay. So now if you go back  
 8 to the e-mail that we were talking about  
 9 with Burson-Marstettler from November  
 10 9th --  
 11 A. Burson.  
 12 Q. Burson. I mean I'm going to  
 13 mispronounce it every time.  
 14 From Burson-Marsteller on  
 15 November 9th, they include a positioning  
 16 brief to aid in discussion with senior  
 17 management.  
 18 A. Okay.  
 19 Q. All right.  
 20 A. I see that.  
 21 Q. And on the agenda for the  
 22 meeting on the 20th is Sarah Colamarino  
 23 discussing a positioning brief, right?  
 24 MS. FRAZIER: Objection to

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1 form.  
2 BY MR. TISI:  
3 Q. Am I correct? There -- that  
4 is on the agenda, right?  
5 A. For the 20th meeting.  
6 Q. Correct.  
7 A. Yes.  
8 MS. FRAZIER: Same  
9 objection.  
10 BY MR. TISI:  
11 Q. And Sarah Colamarino then  
12 forwards this document and she says,  
13 "Here is the current thinking."  
14 Do you see that?  
15 A. I see that e-mail.  
16 Q. And so, just kind of again  
17 to set the table, okay, you met with the  
18 crisis management team at  
19 Burson-Marsteller on the 8th of November.  
20 As a result of those discussions, they  
21 developed and sent to you, among other  
22 things, a position paper to discuss with  
23 senior management. So far so good,  
24 right?

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1 MS. FRAZIER: Objection to  
2 form.  
3 THE WITNESS: I see that in  
4 this e-mail, yes.  
5 BY MR. TISI:  
6 Q. Okay. A week later on the  
7 17th an agenda is circulated for a  
8 meeting on the 20th with, among other  
9 things, a presentation about a  
10 positioning brief to senior management,  
11 correct?  
12 A. I saw that.  
13 MS. FRAZIER: Objection to  
14 form.  
15 BY MR. TISI:  
16 Q. Okay. So let's kind of --  
17 and this document says -- and this was in  
18 anticipation of a meeting of the NTP in  
19 mid December, I think we said the 13th,  
20 14th, and 15th, correct?  
21 A. I believe that is correct.  
22 Q. Okay. So what we have here,  
23 and the statement by Ms. Colamarino is  
24 that the information that was being

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1 forwarded to Consumer Products, this  
2 Nancy Musco, reflects the current  
3 thinking, right?  
4 MS. FRAZIER: Objection to  
5 form. Foundation.  
6 THE WITNESS: I see that in  
7 the e-mail.  
8 BY MR. TISI:  
9 Q. Okay. All right. So let's  
10 talk about what is in this position  
11 statement.  
12 What is a positioning --  
13 actually, let's -- let's -- let me back  
14 up for a minute.  
15 If you go to Page 3 of the  
16 document, it includes Johnson & Johnson  
17 Consumer NTP talc positioning brief. See  
18 that?  
19 A. I see that.  
20 Q. It starts out by saying, "A  
21 controversy" -- and again, this was  
22 developed after speaking to you and  
23 Ms. Colamarino and Mr. Owen on the 8th,  
24 right?

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1 MS. FRAZIER: Objection to  
2 form.  
3 BY MR. TISI:  
4 Q. That's what the document  
5 says --  
6 A. It appears to be the dates,  
7 yes.  
8 Q. Okay. So they didn't send  
9 you this out of the blue. They sent you  
10 this after actually speaking to you,  
11 right?  
12 MS. FRAZIER: Objection to  
13 form.  
14 THE WITNESS: That appears  
15 to be the timeline.  
16 BY MR. TISI:  
17 Q. Okay. And so now there is a  
18 background. "A controversy surrounding  
19 talc has arisen in connection with a  
20 review of the National Toxicology  
21 Program, a program within the U.S.  
22 Department of Health & Human Services.  
23 The NTP has added talc to its list of  
24 Carcinogenic Agents, Substances Or

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1 Mixtures in a preliminary draft of its  
2 Report on Carcinogens."  
3 Okay. And it goes on to say  
4 this is the first step of a lengthy  
5 review process. Do you see that?  
6 A. I see that.  
7 Q. Again, this is in  
8 anticipation of a meeting in mid  
9 December, right?  
10 MS. FRAZIER: Objection to  
11 form. Foundation.  
12 THE WITNESS: That appears  
13 to be the timeline, yes.  
14 BY MR. TISI:  
15 Q. Okay. Proposed Position.  
16 "J&J believes that the  
17 science shows talc is safe."  
18 That's J&J's belief,  
19 correct?  
20 A. That is being stated in this  
21 draft positioning brief.  
22 Q. Well, it's not a draft  
23 positioning brief. It says positioning  
24 brief. Doesn't say draft. It says a

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1 brief that is going to be discussed with  
2 senior management, right?  
3 A. That means it's a draft.  
4 Until it's approved, it's still a draft.  
5 Q. Okay. But involved in this  
6 is the head of consumer product, this  
7 Mr. Owen, right?  
8 A. Yes.  
9 MS. FRAZIER: Objection to  
10 form.  
11 BY MR. TISI:  
12 Q. Okay. And it says,  
13 Controversy surrounding the product in  
14 some markets may reflect our consumer's  
15 peace of mind, right:  
16 A. "Affect our customer's peace  
17 of mind."  
18 Q. Correct. If I misstated, I  
19 apologize.  
20 "This in turn could impact  
21 the commercial viability of the product  
22 in that market."  
23 Do you see that?  
24 A. I see that.

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1 Q. Okay. And so the proposal  
2 is that "while we stand by the safety of  
3 talc, J&J in the U.S. has made a decision  
4 to switch manufacturing entirely to  
5 cornstarch to ensure commercial viability  
6 of its powder products and to ensure  
7 consumer peace of mind."  
8 It says, "This switch will  
9 take place by December 1st, 2000."  
10 Do you see that?  
11 A. I see that.  
12 Q. Okay. It indicates, does it  
13 not, that the switch would take place  
14 that was being proposed by, among other  
15 people, Mr. Owen, the head of consumer  
16 products, the switch would take place  
17 before the NTP ever considers the  
18 question?  
19 MS. FRAZIER: Objection to  
20 form. Foundation.  
21 THE WITNESS: This appears  
22 to be something that was being  
23 floated as a potential action to  
24 take.

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1 BY MR. TISI:  
2 Q. Okay. And the switch would  
3 take place, not as a contingency based  
4 upon what the NTP decides to do in mid  
5 December, but before we know what the NTP  
6 was doing in mid December. True?  
7 MS. FRAZIER: Objection to  
8 form. Foundation.  
9 THE WITNESS: That --  
10 BY MR. TISI:  
11 Q. Well, just in terms -- just  
12 in terms of the timeline, that would be  
13 correct, true?  
14 A. That --  
15 MS. FRAZIER: Same  
16 objection.  
17 THE WITNESS: That timeline  
18 of December 1st, 2000 is listed as  
19 a proposed position.  
20 But I'm sure we'll get to  
21 it, whether this was ever adopted.  
22 BY MR. TISI:  
23 Q. Okay. I understand.  
24 So on the table by this

<p style="text-align: right;">Page 206</p> <p>1 time, by both you as the PR person, as  2 the PR person for consumer products, and  3 the head of consumer products, was that  4 there would be a switch to cornstarch by  5 December 1st, 2000, before the NTP makes  6 a decision one way or the other, right?  7 A. That is incorrect.  8 MS. FRAZIER: Objection to  9 form.  10 BY MR. TISI:  11 Q. Why --  12 A. Any decision about what they  13 would do with the product was going to be  14 specifically done by the company itself.  15 It was -- certainly was not going to be  16 anything in my position where I would  17 be --  18 Q. Understood.  19 A. -- able to comment on that,  20 whether that was a good thing to do or  21 not.  22 Q. Okay.  23 A. I was only going to be  24 involved in necessarily answering</p>	<p style="text-align: right;">Page 208</p> <p>1 discussions with senior management.  2 That's what it says, right?  3 A. That is what these documents  4 say.  5 Q. Okay.  6 MS. FRAZIER: Objection to  7 form. Late objection.  8 BY MR. TISI:  9 Q. And the positioning brief  10 says that J&amp;J -- the proposed position is  11 that J&amp;J has made a decision to switch  12 manufacturing entirely to cornstarch to  13 ensure the commercial viability of its  14 powder products and ensure customer peace  15 of mind, correct?  16 A. That is incorrect. That is  17 a proposed position.  18 Q. Correct.  19 A. And it looks like it's being  20 floated at that time.  21 Q. With senior management.  22 MS. FRAZIER: Objection to  23 form.  24 BY MR. TISI:</p>
<p style="text-align: right;">Page 207</p> <p>1 questions to the media if we did do this,  2 about why we did this.  3 Q. Okay. So again, I'm simply  4 trying to get the timeline here. So the  5 timeline is this, and maybe you can  6 follow me, so far.  7 We have a meeting between  8 yourself, Sarah Colamarino, who is the  9 head of public relations for the consumer  10 products -- you were public relations for  11 corporate, right? And Mr. Owen, who was  12 the head of consumer products. And the  13 crisis management group on the 8th.  14 True?  15 MS. FRAZIER: Objection to  16 form.  17 THE WITNESS: That is,  18 according to these documents, what  19 happened.  20 BY MR. TISI:  21 Q. Okay. On the 9th, based  22 upon what you discussed with the crisis  23 management group, they develop a  24 positioning brief for use with</p>	<p style="text-align: right;">Page 209</p> <p>1 Q. Right?  2 A. Certainly it seems to be  3 something that would have been under  4 discussion at this November 20th date.  5 Q. Okay. And this is  6 consistent with, and why I asked you the  7 questions, with some of the other things  8 that are being said outside the company  9 by doctors like Dr. Cramer, et cetera,  10 about switching to cornstarch, right?  11 MS. FRAZIER: Objection to  12 form.  13 THE WITNESS: No.  14 BY MR. TISI:  15 Q. Okay.  16 A. This would be a positioning  17 statement, because if the National  18 Toxicology Program made a decision that  19 said the use of talc was a -- I can't  20 remember what we said the exact language  21 is, but had the potential to cause  22 cancer.  23 Q. Okay.  24 A. That would impact the</p>

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1 reputation of Johnson & Johnson as well  
2 as the potential viability of these  
3 products.  
4 So what we were reading  
5 here, it appears to be, you know, what we  
6 should be looking at considering as a  
7 potential business option, or at least,  
8 you know, the business people doing it.  
9 Q. And for consumer's peace of  
10 mind, right?  
11 A. Yes.  
12 Q. That's what it says. Okay.  
13 And the switch would take place before  
14 the -- before the NTP even considers the  
15 question. True?  
16 A. That looks to be --  
17 MS. FRAZIER: Objection to  
18 form.  
19 THE WITNESS: That looks to  
20 be what the proposal was that this  
21 action take place before the NTP  
22 made any evaluation.  
23 BY MR. TISI:  
24 Q. Now, if you look at the next

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1 page, it's the NTP talc Johnson & Johnson  
2 Consumer.  
3 It says, "A draft report,"  
4 the second paragraph, "is to be presented  
5 on the 13, 14 of December to the NTP  
6 Board of Scientific Counselors, report  
7 on" -- the Report on Carcinogens  
8 Committee.  
9 Do you see that?  
10 A. I see that.  
11 Q. So again, you know, in our  
12 time frame here, the proposed switch to  
13 cornstarch would be made for, among other  
14 things, consumer peace of mind, the  
15 proposal was made for it to be done  
16 before the NTP ever takes up the  
17 question, the Board of Scientific  
18 Counselors?  
19 MS. FRAZIER: Objection to  
20 form.  
21 THE WITNESS: That appears  
22 to be the timeline that we were  
23 discussing.  
24 BY MR. TISI:

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1 Q. Okay. And the draft holding  
2 statement, which is the last page -- now  
3 this is a draft.  
4 The other document that we  
5 looked at doesn't say it's a draft, does  
6 it?  
7 A. No, but it's a positioning  
8 statement. And if it has not been  
9 adopted by the company, then it is a  
10 draft.  
11 Q. Okay. This one says a  
12 draft. And it says, "This is a draft  
13 holding statement which is prepared,"  
14 which would be -- tell us what a holding  
15 statement is.  
16 A. This would be a statement  
17 that we would be providing to the media  
18 anticipating that something could occur.  
19 Q. Okay.  
20 A. It would be just getting  
21 everybody's thinking in line so that if  
22 that thing does come to pass, then we are  
23 ready to provide a statement to the  
24 media.

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1 Q. Okay.  
2 A. It's always done in advance.  
3 Q. Okay. Right. And so this  
4 is, as a result of your communications  
5 and the head of consumer products and the  
6 people of -- you, on behalf of corporate,  
7 and Sarah Colamarino, who is PR for  
8 consumer products, as a result of your  
9 discussions, the recommendation would be  
10 to withdraw the product. True?  
11 MS. FRAZIER: Objection to  
12 form.  
13 THE WITNESS: I cannot say  
14 that I would have been proposing  
15 that, because that would not be my  
16 position -- in my position as  
17 somebody who would respond to  
18 media, that would not be part of  
19 my responsibilities. That would  
20 have to be the decision of the  
21 consumer products companies  
22 themselves.  
23 BY MR. TISI:  
24 Q. Right. But the consumer

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1 products companies were actually involved  
2 in input in the information that resulted  
3 in both the positioning document for use  
4 with senior management, and the holding  
5 statement, true?  
6 MS. FRAZIER: Objection to  
7 form.  
8 THE WITNESS: We would be  
9 there -- as public relations  
10 people, we would be there to, you  
11 know, talk about, you know, how  
12 these actions would be perceived  
13 in media.  
14 BY MR. TISI:  
15 Q. Correct. It's how to -- how  
16 to present it in the most palatable way,  
17 correct?  
18 A. It's how to portray it and  
19 providing the best information that we  
20 can to the public.  
21 Q. Okay. But also involved in  
22 drafting this holding statement was  
23 Mr. Owen, who is the head of consumer  
24 products, right?

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1 MS. FRAZIER: Objection to  
2 form.  
3 THE WITNESS: Mr. Rankin.  
4 BY MR. TISI:  
5 Q. Mr. Rankin. Owen Rankin.  
6 Excuse me, I'm sorry.  
7 A. Drafting it, no. Evaluating  
8 it, yes.  
9 Q. Well, inputting to what  
10 would go in -- in fact, just to be clear,  
11 there was a meeting with the three of you  
12 on the 8th. Based upon the information  
13 that was gleaned during that meeting,  
14 Burson-Marsteller drafted these documents  
15 and sent them on the 9th, right?  
16 A. That is correct.  
17 Q. All right. So the  
18 information -- I mean  
19 Burson-Marsteller -- if it isn't your  
20 job, it certainly isn't their job to talk  
21 about withdrawing the product, is it?  
22 A. This was --  
23 MS. FRAZIER: Objection to  
24 form. Foundation.

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1 THE WITNESS: This is a  
2 proposed positioning and a  
3 potential draft statement.  
4 So they are providing a  
5 suggestion to, I guess, Owen  
6 Rankin and others as to how  
7 something could potentially go.  
8 BY MR. TISI:  
9 Q. Okay.  
10 A. So it is not that they've  
11 made a decision. They are making a  
12 proposal.  
13 Q. I understand.  
14 But again, when you say  
15 they, okay, Burson-Marsteller are simply  
16 trying to help you craft the document.  
17 They are getting the information from the  
18 head of consumer products, Mr. Rankin,  
19 right?  
20 MS. FRAZIER: Objection to  
21 form. Foundation.  
22 THE WITNESS: They would  
23 have had input and they would have  
24 been drafting the document. I

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1 believe that would be accurate.  
2 BY MR. TISI:  
3 Q. Okay. And this would be in  
4 anticipation of a December 1st switch  
5 from talc to cornstarch before the NTP  
6 ever lays eyes on that report in mid  
7 December, true?  
8 A. That is the proposal --  
9 MS. FRAZIER: Objection to  
10 form.  
11 BY MR. TISI:  
12 Q. Okay. Let's go back further  
13 in time.  
14 A. I'm sorry, I do need to take  
15 a short break. I -- you know, if we can  
16 just do this in three minutes --  
17 MR. TISI: No, no, no. Take  
18 your break. I'm going to work on  
19 a new document --  
20 THE WITNESS: Okay.  
21 MR. TISI: -- that's totally  
22 fine. And this is -- we're  
23 actually moving fast so I  
24 appreciate that. I've got two

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1 more pages left of my outline. So  
2 go ahead, take your -- do what you  
3 need to do and we'll be right  
4 back.  
5 THE VIDEOGRAPHER: The time  
6 is 1:51 p.m. Off the record.  
7 (Short break.)  
8 THE VIDEOGRAPHER: The time  
9 is 1:58 p.m. On the record.  
10 BY MR. TISI:  
11 Q. All right. Mr. McKeegan, we  
12 talked about, again, before the break,  
13 just to kind of give a sense of where we  
14 are, we talked about a meeting that was  
15 occurring on the 20th with senior  
16 management, and we talked about a  
17 proposal that was drafted after  
18 consulting you and Consumer Products,  
19 Mr. Rankin, on the 8th and 9th.  
20 I've looked in vain for any  
21 documents relating to the meeting on the  
22 20th.  
23 Have you ever seen any  
24 documents relating to the meeting, senior

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1 management meeting on the 20th where the  
2 proposal was presented to withdraw talc?  
3 MS. FRAZIER: Objection to  
4 form.  
5 THE WITNESS: I don't recall  
6 any summary document of it. And I  
7 don't have any specific memory of  
8 the meeting itself.  
9 BY MR. TISI:  
10 Q. But an agenda on that  
11 meeting was -- we agreed the presenting  
12 of this position to senior management for  
13 a decision, correct?  
14 MS. FRAZIER: Objection to  
15 form.  
16 THE WITNESS: I presume that  
17 Sarah was presenting this  
18 document, but I don't remember the  
19 specifics of what the -- occurred  
20 at this meeting.  
21 BY MR. TISI:  
22 Q. Okay. In any event, we know  
23 that talc was not withdrawn and replaced  
24 with cornstarch, correct?

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1 A. I believe that's true, yes.  
2 Q. Okay. Let's go back in  
3 time, even before you met with  
4 Burson-Marsteller on the 8th.  
5 I'd like to go to late  
6 October of 2000.  
7 MR. TISI: If you would go  
8 to Tab 34 in your binder.  
9 (Document marked for  
10 identification as Exhibit  
11 P1.626.)  
12 BY MR. TISI:  
13 Q. This is a document from the  
14 CFTA, which again for the members of the  
15 jury, is the trade organization  
16 representing all of the member talc  
17 manufacturers, right?  
18 MS. FRAZIER: Objection to  
19 form. Foundation.  
20 THE WITNESS: I don't -- I  
21 couldn't tell you if all the talc  
22 manufacturers were part of this  
23 organization. But it does -- it  
24 is a representation and

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1 association that was involved with  
2 many consumer products companies,  
3 including Johnson & Johnson.  
4 BY MR. TISI:  
5 Q. Okay. And including -- and  
6 specifically they were involved with  
7 dealing with the talc issue on behalf of  
8 not just J&J, but other companies who  
9 produced talcum powder products as well,  
10 true?  
11 MS. FRAZIER: Objection to  
12 form. Foundation.  
13 THE WITNESS: According to  
14 these documents, that appears to  
15 be true.  
16 BY MR. TISI:  
17 Q. Okay. And this is a  
18 memorandum from your trade organization  
19 to, among others, you, Bristol-Myers  
20 Squibb, Luzenac, and Unilever from the  
21 vice -- to -- from Irene Malbin who is  
22 the person who we've spoken to -- spoken  
23 about before, who you communicated with,  
24 right?

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1 A. That is true.  
2 Q. And this is dated  
3 October 27, 2000. And it's the proposal  
4 from Nichols-Dezenhall on talc.  
5 A. That is what the document  
6 says.  
7 Q. And you recognize  
8 Nichols-Dezenhall also as a crisis  
9 management firm. True?  
10 MS. FRAZIER: Objection to  
11 form.  
12 THE WITNESS: I believe that  
13 is -- I believe that is accurate.  
14 BY MR. TISI:  
15 Q. And they were making a  
16 proposal. And, in fact, if you remember,  
17 they were the authors of the talc  
18 landscape article -- e-mail, that was  
19 forwarded to you on December 7th which is  
20 Exhibit 603 in Tab 11, correct?  
21 A. That is correct.  
22 Q. And the article, the  
23 memorandum says, "Attached is the  
24 proposal from Nichols-Dezenhall on the

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1 Talc issue."  
2 A. Yes.  
3 Q. And Ms. Malbin is asking for  
4 comments immediately, within three days,  
5 correct?  
6 A. That is correct.  
7 Q. And this would have been  
8 about a week or so before you met with  
9 your own crisis management team at  
10 Burson-Marsteller on the 8th, correct?  
11 MS. FRAZIER: Objection to  
12 form.  
13 THE WITNESS: That appears  
14 to be the correct timeline, yes.  
15 BY MR. TISI:  
16 Q. Okay. Now, if you will go  
17 to the second page, which is the  
18 confidential memorandum from  
19 Nichols-Dezenhall.  
20 Oh, actually before we do  
21 that, let's go to the back of the  
22 document. Page 626.9.  
23 There is an e-mail fax  
24 transmission from Irene Malbin, to Avon,

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1 the chair of the PAC. Do you see that?  
2 A. I see that.  
3 Q. That stands for public  
4 affairs committee?  
5 MS. FRAZIER: Objection to  
6 form. Foundation.  
7 THE WITNESS: I see that.  
8 BY MR. TISI:  
9 Q. Okay. Is that correct,  
10 public affairs committee, is that what  
11 PAC stands for?  
12 A. I would have no idea.  
13 MS. FRAZIER: Same  
14 objections.  
15 BY MR. TISI:  
16 Q. Well, okay. Then let's see  
17 if we can refresh your recollection.  
18 MR. TISI: Let's go to  
19 Page 7.  
20 BY MR. TISI:  
21 Q. There's a document, CFTA  
22 public affairs list. Johnson & Johnson  
23 had two members on that list. Both you  
24 for Johnson & Johnson corporate, and

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1 Sarah Colamarino for Johnson & Johnson  
2 Consumer Products, correct?  
3 A. I see that.  
4 Q. Okay. And it says public  
5 affairs. Does this appear to be a  
6 committee, a public affairs committee?  
7 MS. FRAZIER: Objection to  
8 form.  
9 THE WITNESS: I don't know  
10 what this is. I don't know what  
11 the public affairs committee is.  
12 This looks just to have our fax  
13 numbers to share information with  
14 us.  
15 BY MR. TISI:  
16 Q. Right. And -- but the memo  
17 from Kathleen Walas, the chair of the  
18 PAC, which would correspond with public  
19 affairs committee says, "My attached  
20 cover memo went to public affairs people  
21 from the four companies that have given  
22 money to the Interested Party Talc Task  
23 Force. Irene."  
24 Do you see that?

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1 A. I see that.  
2 Q. Okay. So this indicates --  
3 this tells Ms. Walas, the chair of the  
4 committee, that four other people on the  
5 committee, including yourself and Sarah  
6 Colamarino, were sent this document,  
7 true?  
8 MS. FRAZIER: Objection to  
9 form.  
10 THE WITNESS: Actually the  
11 document that says we received the  
12 document is the first page of  
13 this. I don't know who Kathleen  
14 Walas is or what the public  
15 affairs committee did.  
16 BY MR. TISI:  
17 Q. Okay. But this, again, is  
18 the -- is the list -- this provides a  
19 confidential memorandum. This is a week  
20 ahead of your meeting with  
21 Burson-Marsteller, your own crisis  
22 management team, and this is a proposal  
23 to the entire -- to the public affairs  
24 committee of CTFA, right?

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1 MS. FRAZIER: Objection to  
2 form.  
3 THE WITNESS: I don't know  
4 anything about a public affairs  
5 committee. I know that our name  
6 is on here because we would be  
7 interested members --  
8 BY MR. TISI:  
9 Q. Okay.  
10 A. -- based on having talc as a  
11 product. But I don't know what a public  
12 affairs committee of the CTFA was. We  
13 would have dealt with Irene Malbin.  
14 Q. Okay. So -- and, again, it  
15 shows that this was faxed to you,  
16 correct?  
17 If you look at the --  
18 A. Yes, it does appear to be  
19 faxed to me, yes.  
20 Q. Okay. Now, if you go to the  
21 document, the confidential memorandum  
22 itself, let's go through it.  
23 "As you know, over the  
24 years, we've stood shoulder-to-shoulder

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1 with CTFA and its members in unbending  
2 defense of the safety of several  
3 cosmetics ingredients. More often than  
4 not, together, we've prevailed."  
5 Do you see that?  
6 A. I see that.  
7 Q. "Like you, we have never  
8 shied away from a tough battle, and we're  
9 not going to start now. We're with you  
10 100 percent of the way."  
11 See that?  
12 A. I see that.  
13 Q. Okay. And, again, the date  
14 is October 27, 2000. This is before the  
15 NTP ever got the question of whether  
16 talc -- the NTP scientific committee ever  
17 got the question about whether or not  
18 talc was a human carcinogen or  
19 anticipated to be a human carcinogen,  
20 right?  
21 MS. FRAZIER: Objection to  
22 form. Foundation.  
23 THE WITNESS: It is  
24 definitely before their meeting to

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1 make those decisions, but I would  
2 have no idea if they had received  
3 any information to review  
4 beforehand.  
5 BY MR. TISI:  
6 Q. There comes -- it goes on to  
7 say, "There comes a time, however, when  
8 it is essential that - together - we  
9 fully assess and appreciate what we're up  
10 against."  
11 Do you see that?  
12 A. I see that.  
13 Q. "While the objective of our  
14 forthcoming effort - to vigorously defend  
15 the safety of talc use in cosmetics  
16 products - is not in question, we need to  
17 be mindful of the following."  
18 Do you see that?  
19 A. I see that.  
20 Q. And I read that correctly,  
21 true?  
22 A. Yes.  
23 Q. And this is something you  
24 most likely would have received before

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1 meeting with your own PR folks. True?  
 2 MS. FRAZIER: Objection to  
 3 form.  
 4 THE WITNESS: Well, it says  
 5 on the first page of this document  
 6 that this was sent to me, correct?  
 7 BY MR. TISI:  
 8 Q. Yes.  
 9 A. Okay.  
 10 Q. Okay. And it goes to say,  
 11 "A federally funded scientific  
 12 organization may declare that cosmetic  
 13 talc is 'reasonably anticipated to be a  
 14 human carcinogen.'  
 15 The draft report on talc use  
 16 in the perineal and on sanitary napkins.  
 17 This is alarming if scientifically flimsy  
 18 declaration, according to the PR folks,  
 19 right?  
 20 A. I see that.  
 21 Q. "Potential consumer outrage  
 22 over its continued use in products with  
 23 babies and for female hygiene purposes  
 24 may go off the charts."

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1 Do you see that?  
 2 A. I see that.  
 3 Q. It says, "Consumer groups,  
 4 media, and potentially regulatory  
 5 pressure to transition out of talc, given  
 6 that there is an alternative, may be  
 7 overwhelming."  
 8 Do you see that?  
 9 A. I see that.  
 10 Q. And you understood that the  
 11 alternative, and we've talked about this  
 12 several times today, was cornstarch,  
 13 right?  
 14 MS. FRAZIER: Objection to  
 15 form. Foundation.  
 16 THE WITNESS: That was  
 17 actually another product that  
 18 Johnson & Johnson was selling I  
 19 believe at this time.  
 20 BY MR. TISI:  
 21 Q. All right. And it was  
 22 ultimately proposed, at least after you  
 23 met with your own crisis management team,  
 24 the proposal was made to get out of talc

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1 entirely by December 1st, 2000, right?  
 2 MS. FRAZIER: Objection to  
 3 form.  
 4 THE WITNESS: That is what  
 5 Burson-Marsteller proposed.  
 6 BY MR. TISI:  
 7 Q. It says, "The legal  
 8 liabilities of continuing sales of talc  
 9 products, not to mention Prop 65  
 10 implications, are profound."  
 11 Do you see that?  
 12 A. I see that.  
 13 Q. And it says, "Pediatricians  
 14 and gynecologists have been advocating  
 15 the use of cornstarch powder for years  
 16 and will now become more vocal in their  
 17 concerns about talc."  
 18 Do you see that?  
 19 A. I see that.  
 20 Q. That's kind of consistent  
 21 with what we talked about before with  
 22 Dr. Cramer saying, you know, in light of,  
 23 you know, the evidence, why would you  
 24 even use talc, switch to cornstarch,

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1 right?  
 2 MS. FRAZIER: Objection to  
 3 form.  
 4 THE WITNESS: And Johnson &  
 5 Johnson offered both products, as  
 6 I think we just discussed.  
 7 BY MR. TISI:  
 8 Q. Correct, correct.  
 9 Okay. They go on to say,  
 10 "We could go on and on in laying out the  
 11 negatives, but the bottom line - except  
 12 for a very few number of recruited  
 13 scientific experts - the cosmetics  
 14 industry will be a lone voice in handling  
 15 a very tough issue," correct?  
 16 A. I see that.  
 17 Q. Can you think of a single  
 18 scientific expert that you -- you said  
 19 that you deferred to the expert in terms  
 20 of the drafting of your statements. Can  
 21 you think of any scientific expert,  
 22 either who worked for J&J, or who was  
 23 recruited by J&J, who advocated that  
 24 women should use talc instead of

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1 cornstarch?

2 MS. FRAZIER: Objection to

3 form. Foundation.

4 THE WITNESS: I think that

5 question is incorrect. I think

6 there would not have been a

7 recommendation from experts as to

8 whether people should use one

9 product over another. Both

10 products were being offered in the

11 market.

12 If your question is if

13 they -- am I aware of any J&J

14 experts who felt there was a risk

15 of using talc products, I am not

16 aware of anybody who --

17 BY MR. TISI:

18 Q. Okay. That was not my

19 question. That was not my question so I

20 move to strike.

21 My question was: Other than

22 J&J employees and recruited scientific

23 experts by J&J or the talc industry, can

24 you think of anybody who recommended that

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1 people use talc instead of cornstarch for

2 feminine hygiene?

3 MS. FRAZIER: Objection to

4 form. Foundation.

5 THE WITNESS: That's a -- I

6 just can't answer a question like

7 that. That's too broad a

8 question. I have no way of

9 knowing if there was people out

10 there, or if there is an

11 assumption that women should use

12 one product or another for

13 feminine hygiene.

14 So if you're asking if

15 there's anybody in the universe of

16 experts who might recommend one or

17 the other, I have no -- no idea

18 and no way of answering the

19 question.

20 BY MR. TISI:

21 Q. Well, this document says

22 pediatricians and gynecologists have been

23 advocating use of cornstarch powder for

24 years and will now become more vocal in

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1 their concerns about talc, true?

2 A. That's what this document

3 says.

4 Q. Okay. It also says "It

5 serves to remind us of the relative

6 regulatory freedom of the cosmetics

7 industry depends, in large part, on the

8 hard won perception it takes

9 self-policing action when confronted with

10 credible information about ingredient

11 safety issue."

12 Do you see that?

13 A. I see that.

14 Q. Okay. So what these crisis

15 management said -- is saying, and I'm

16 paraphrasing is, is people rely on, the

17 public relies on, the cosmetic industry

18 to police itself when confronted with

19 information about a safety issue, true?

20 MS. FRAZIER: Objection to

21 form. Foundation.

22 THE WITNESS: It does say

23 that the cosmetic industry

24 performs self-policing action when

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1 confronted with credible

2 information about an ingredient

3 safety issue.

4 BY MR. TISI:

5 Q. And the failure to act on

6 talc may threaten that, correct?

7 MS. FRAZIER: Objection to

8 form.

9 THE WITNESS: I think I

10 would agree with that statement,

11 if the National Toxicology Program

12 had taken an action and said that

13 there was a reasonable expectation

14 of -- that a product could be

15 conceived of causing cancer, that

16 there would be a risk of

17 continuing to sell such a product.

18 BY MR. TISI:

19 Q. Going on to the next page,

20 it said -- it says, it would -- last

21 paragraph, last sentence in the first

22 paragraph. It says, "It would not be" --

23 "it would not be unwise for companies

24 marketing talc-based products for use

<p style="text-align: right;">Page 238</p> <p>1 with babies and infants to consider ways 2 to reformulate if necessary." 3 Do you see that? 4 A. I see that. 5 Q. So in fairness -- so now you 6 have two crisis management firms, one 7 with CFTA, the talc industry trade 8 representative who does lobbying and 9 those kinds of things, recommending the 10 company should look to reformulate the 11 product, true? 12 MS. FRAZIER: Objection to 13 form. 14 THE WITNESS: No, that's not 15 the case. You know, they were 16 saying that -- they were saying 17 there is a potential here that 18 must be considered. 19 And if that -- if it does 20 come about, then it should be 21 considered to reformulate. 22 And Burson-Marsteller made a 23 recommendation for a proposal -- 24 because I don't know if it was a</p>	<p style="text-align: right;">Page 240</p> <p>1 use cornstarch and not talc, in light of 2 the fact that your -- the CFTA crisis 3 management folks said, you know, the time 4 may be right to consider reformulating 5 the product, it would not be unwise, the 6 proposal of Burson-Marsteller to switch 7 out of talc by December 1st, who made the 8 decision not to do that in early 9 December? 10 MS. FRAZIER: Objection to 11 form. Foundation. 12 THE WITNESS: I have -- I 13 don't have any idea as to who 14 specifically would have made the 15 decision. 16 You know, it would have been 17 a business decision as much as a 18 reputational decision as to 19 whether to do it. 20 And then when the National 21 Toxicology Program met, they 22 decided not to add talc to that 23 list. 24 BY MR. TISI:</p>
<p style="text-align: right;">Page 239</p> <p>1 recommendation -- that the talc 2 products be moved out of consumer 3 products before the National 4 Toxicology Program met. 5 BY MR. TISI: 6 Q. Right. And we also looked 7 at other organizations and doctors that 8 said that perhaps maybe women should be 9 using cornstarch instead of talc, right? 10 MS. FRAZIER: Objection to 11 form. 12 THE WITNESS: There were 13 other -- I'm not even sure they 14 were organizations. There were 15 other people who were saying that 16 women should not use talc. I'm 17 not even sure that they were 18 saying they should use one product 19 or another product. 20 BY MR. TISI: 21 Q. So in light of these facts, 22 the fact that outside organizations and 23 doctors, and according to this doctor, 24 gynecologist, were suggesting that women</p>	<p style="text-align: right;">Page 241</p> <p>1 Q. Well, we'll talk about that 2 in a moment. But let's kind of freeze 3 frame in early December of 2000, before 4 the National Toxicology Program did 5 anything, right? 6 There was a meeting of 7 senior management on the 20th. We've 8 never seen any meeting minutes relating 9 to that. You've never seen any meeting 10 minutes, but you were at the meeting, 11 true? 12 MS. FRAZIER: Objection to 13 form. 14 BY MR. TISI: 15 Q. You were -- let me rephrase 16 the question. 17 You were slated to present 18 at a meeting on the 20th, true? 19 A. That is true. 20 MS. FRAZIER: Objection to 21 form. 22 BY MR. TISI: 23 Q. Colamarino -- Colamarino was 24 set to present the proposal that was</p>

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1 drafted in conjunction with you and  
2 Burson-Marsteller that the talc be  
3 discontinued within ten days, by  
4 December 1st, correct?  
5 MS. FRAZIER: Objection to  
6 form.  
7 THE WITNESS: That is, as I  
8 recall from what we've looked at  
9 before, what was on the agenda,  
10 yes.  
11 BY MR. TISI:  
12 Q. And that would have been --  
13 I think we can both agree, that would  
14 have been a pretty important business  
15 decision, correct?  
16 MS. FRAZIER: Objection to  
17 form. Foundation.  
18 THE WITNESS: I'm sure it  
19 would have been a very important  
20 business issue.  
21 BY MR. TISI:  
22 Q. I mean this wasn't a  
23 decision about whether to use powdered  
24 creamer or half and half in the coffee,

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1 was it?  
2 MS. FRAZIER: Objection to  
3 form. Foundation.  
4 BY MR. TISI:  
5 Q. This is a big deal,  
6 withdrawing a product. And the proposal  
7 was made that this be done on  
8 December 1st, 2000, correct?  
9 MS. FRAZIER: Objection to  
10 form.  
11 THE WITNESS: This proposal  
12 was made by a crisis public  
13 relations firm, and it was up to  
14 the business unit to decide  
15 whether this was something that  
16 they thought should be done.  
17 BY MR. TISI:  
18 Q. And you were at that  
19 meeting, Ms. Colamarino was at that  
20 meeting, and all these high level folks  
21 were at that meeting on November 20,  
22 2000. And you have never seen any  
23 minutes of that meeting, have you?  
24 MS. FRAZIER: Objection to

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1 form.  
2 THE WITNESS: I don't know  
3 if I have. I don't -- I don't  
4 remember any.  
5 BY MR. TISI:  
6 Q. And you don't remember that  
7 meeting, true?  
8 A. I mean, it was 20-something  
9 years ago. I don't have any specific  
10 recollection of that meeting.  
11 Q. And in the end of the day,  
12 the recommendation that it would not be  
13 unwise to switch, that the company should  
14 discontinue and just sell cornstarch,  
15 that women should switch to cornstarch,  
16 all those recommendations that were in  
17 the ether in 2000, never came to pass,  
18 did they?  
19 MS. FRAZIER: Objection to  
20 form.  
21 THE WITNESS: Johnson &  
22 Johnson continued -- continued to  
23 sell talc products.  
24 BY MR. TISI:

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1 Q. Without a warning that said  
2 they are a potential for cancer, true?  
3 MS. FRAZIER: Objection to  
4 form. Foundation.  
5 THE WITNESS: The National  
6 Toxicology Program never  
7 determined that there was  
8 potential to cause cancer and  
9 there was never any action that  
10 I'm aware of that said that such a  
11 warning would need to be placed on  
12 the product.  
13 MR. TISI: Move to strike.  
14 BY MR. TISI:  
15 Q. The question is: The  
16 information was never provided by J&J to  
17 women that would allow them to make the  
18 decision, do I want to use cornstarch, or  
19 do I want to use talc. They were never  
20 given that information, were they?  
21 MS. FRAZIER: Objection to  
22 form. Foundation.  
23 THE WITNESS: Johnson &  
24 Johnson provided both products,

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1 cornstarch and talc, to the market  
 2 and it was up to the consumers to  
 3 decide whether they wanted to use  
 4 one or the other.  
 5 There was no regulatory  
 6 action that I'm aware of that  
 7 would have made a determination  
 8 that any kind of warning label  
 9 should have been put on the  
 10 product, or that one product or  
 11 the other should have been removed  
 12 from the market.  
 13 BY MR. TISI:  
 14 Q. Let's go to what the NTP  
 15 actually did.  
 16 MR. TISI: Let's look at  
 17 Exhibit Number 610.  
 18 (Document Marked for  
 19 identification as Exhibit  
 20 P1.610.)  
 21 THE WITNESS: Which tab is  
 22 that?  
 23 MR. TISI: Sorry. Tab 18.  
 24 First of all, while we were

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1 on a break, while we're just  
 2 looking at that -- Kat, I will  
 3 tell you I looked up and down for  
 4 anything related to the meeting on  
 5 the 20th. And I would ask that  
 6 you -- I know we've asked you on  
 7 occasion to go back and take a  
 8 look for things that very  
 9 specifically we believe exists or  
 10 not.  
 11 But any documents  
 12 surrounding the meeting on the  
 13 20th, I would ask that you take a  
 14 look at and I'll follow up with a  
 15 letter on that.  
 16 MS. FRAZIER: That's fine.  
 17 We'll do that.  
 18 MR. TISI: Okay. Thank you.  
 19 BY MR. TISI:  
 20 Q. All right. Mr. McKeegan,  
 21 before you is Exhibit Number 610, is an  
 22 e-mail dated December 15th from Gary  
 23 Noble to yourself and John McKeegan --  
 24 I'm sorry, and Sarah Colamarino, correct?

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1 A. I see that, yes.  
 2 Q. And it forwards an e-mail  
 3 that you received on the 14th, following  
 4 the decision of the NTP, do you see that?  
 5 A. I see that, yes.  
 6 Q. Now, it says, "I'm sure  
 7 you've heard that the panel voted 7 to 3  
 8 not to list non-asbestiform talc."  
 9 Do you see that?  
 10 A. I see that.  
 11 Q. Okay. But they indicate  
 12 what the decision was based on. Do you  
 13 see that?  
 14 "The decision was primarily  
 15 due to the fact there was no consensus as  
 16 to the definition of asbestiform or  
 17 non-asbestiform talc."  
 18 Do you see that?  
 19 A. I see that.  
 20 Q. It was not -- and I think  
 21 there's been testimony in this case, the  
 22 NTP deferred the question about whether  
 23 talc can cause ovarian cancer. Do you  
 24 remember that?

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1 MS. FRAZIER: Objection to  
 2 form.  
 3 THE WITNESS: I actually --  
 4 I actually don't remember the  
 5 specifics of that. I just  
 6 remember the outcome, that it was  
 7 not added to the list.  
 8 BY MR. TISI:  
 9 Q. And I will represent to you  
 10 that the issue was deferred, the question  
 11 was deferred to a later time.  
 12 But there were three members  
 13 of the committee who did vote and thought  
 14 that it should be listed then, correct?  
 15 MS. FRAZIER: Objection to  
 16 form. Foundation.  
 17 BY MR. TISI:  
 18 Q. That's what it says, right?  
 19 A. I am looking at your e-mail,  
 20 and that is -- the e-mail that you  
 21 forwarded, and that is -- the count was 7  
 22 to 3 --  
 23 Q. Okay.  
 24 A. -- not to list

<p style="text-align: right;">Page 250</p> <p>1 non-asbestiform talc.  2 Q. Right. So there are  3 three -- there are -- this again  4 represents what we've started our  5 deposition about today, that there  6 were -- remember, we looked at those  7 meeting notes from 1995, which had  8 some -- excuse me, 1998, where some  9 evidence went one way, some evidence went  10 another way, there was a question, do you  11 remember that?  12 MS. FRAZIER: Objection to  13 form.  14 THE WITNESS: Yes.  15 BY MR. TISI:  16 Q. And this indicates that  17 there was still an open question, true;  18 some people thought there were, some  19 people thought there weren't based upon a  20 definitional question, true?  21 MS. FRAZIER: Objection to  22 form.  23 THE WITNESS: I am not aware  24 of how the National Toxicology</p>	<p style="text-align: right;">Page 252</p> <p>1 A. So consumers could make an  2 informed decision as to which product  3 they preferred.  4 Q. How could they be -- how  5 could they be informed, sir, if there is  6 no information on the bottle or in your  7 advertising or in your public relations  8 that gives anybody any suggestion that  9 there is a question about whether talc is  10 safe or not?  11 MS. FRAZIER: Objection to  12 form. Foundation.  13 THE WITNESS: I'm only going  14 by what you've presented here  15 today.  16 BY MR. TISI:  17 Q. Okay.  18 A. There have been a number of  19 articles and studies that you've  20 presented that say that this was a  21 question.  22 There is also the vote here  23 by the National Toxicology Program panel  24 that says it is not a potential</p>
<p style="text-align: right;">Page 251</p> <p>1 Program makes its decisions, but  2 it seems to, from this e-mail,  3 that they make decisions based on  4 a vote of a majority of the panel.  5 And that decision of the panel was  6 not to list it as a -- as --  7 non-asbestiform talc as a -- on  8 the list of potential carcinogens.  9 BY MR. TISI:  10 Q. But ultimately you know and  11 understand, just as we talked about  12 before, the decision whether to switch  13 from talc to -- from talc to cornstarch  14 for example, lied solely within the  15 company, true?  16 MS. FRAZIER: Objection to  17 form.  18 THE WITNESS: The company --  19 MS. FRAZIER: Foundation.  20 Go ahead.  21 THE WITNESS: The company at  22 this time sold both products.  23 BY MR. TISI:  24 Q. Right.</p>	<p style="text-align: right;">Page 253</p> <p>1 carcinogen. And I apologize if I'm not  2 getting the wording correctly.  3 Q. Well, do you know that  4 the -- subsequently IARC concluded that  5 it was a possible carcinogen?  6 A. I'm not aware --  7 MS. FRAZIER: Objection to  8 form -- wait a second, John. Wait  9 a second, John. Let me object.  10 Objection to form.  11 Foundation.  12 BY MR. TISI:  13 Q. My question though -- my  14 question though, Doctor, is taking --  15 A. Doctor?  16 Q. Doctor, I'm sorry. I just  17 promoted you, Mr. McKeegan.  18 Taking NTP out of it, the  19 decision about whether to market  20 cornstarch exclusively and remove talc  21 products from the market was something  22 that was being considered independent of  23 what NTP ultimately did. You agree with  24 that, right?</p>

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1 MS. FRAZIER: Objection to  
2 form. Foundation.  
3 THE WITNESS: I can't -- I  
4 can't remember what if any  
5 business decision was made about  
6 that --  
7 BY MR. TISI:  
8 Q. I didn't ask that --  
9 A. -- you had asked something  
10 before -- you had made something before  
11 about it being added to another list.  
12 And I have no information about that.  
13 And I left Johnson & Johnson more than  
14 20 years ago, approximately 20 years ago.  
15 Q. That really isn't my  
16 question. Maybe my question was  
17 inartfully worded. So I'll either move  
18 to strike it or withdraw the question.  
19 But my question was, we went  
20 through a series of documents, including  
21 from Burson-Marsteller,  
22 Nichols-Dezenhall, CFTA, Mr. Rankin, and  
23 yourself, and Ms. Colamarino, the  
24 positioning statement, and all those

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1 things we just talked about, that talked  
2 about withdrawing talc products in favor  
3 of cornstarch products.  
4 First of all, do you  
5 remember that?  
6 A. Yes, I remember those.  
7 Q. And all of those things were  
8 done independent of NTP and could have  
9 been done at any time, true?  
10 A. Not true.  
11 Q. Okay. You don't think that  
12 the company could have withdrawn the  
13 product?  
14 A. The company could have  
15 withdrawn the product, but those  
16 considerations were being brought up  
17 because of the potential for a decision  
18 by the NTP.  
19 Q. Okay. All right. Let me  
20 ask you this -- a couple more questions.  
21 MS. FRAZIER: Excuse me.  
22 Can you -- can you guys hear me?  
23 MR. TISI: Yes.  
24 THE WITNESS: Yes.

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1 MS. FRAZIER: Okay. Well,  
2 because I lost audio and so I've  
3 missed the last, I don't know how  
4 long, probably 30, 45 seconds  
5 worth. So I object to everything  
6 that you asked, Chris, on form.  
7 MR. TISI: Okay. And I will  
8 accept your objection in the dark.  
9 BY MR. TISI:  
10 Q. Okay. One other question.  
11 You left J&J in January within -- or  
12 February 1st, I think, you know, within  
13 six weeks of the NTP decision, true?  
14 A. What?  
15 Q. You left your J -- you left  
16 your position as --  
17 A. Oh.  
18 Q. -- I think it was director  
19 of public relations, and I probably am  
20 mangling the title.  
21 But you left the position  
22 you were in in January or early February  
23 of 2001, correct?  
24 A. February 2001 I did move

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1 over to a Johnson & Johnson operating  
2 company, Johnson & Johnson Healthcare  
3 Systems, taking the position that Sarah  
4 Colamarino had had when she moved over to  
5 the Consumer Products company.  
6 Q. Okay. Did your -- do you  
7 typically have -- when you have to switch  
8 companies, or switch positions, like  
9 this, or switch companies like you did,  
10 are you typically -- do you do any kind  
11 of -- did you have to interview for that?  
12 A. Yes.  
13 Q. Were there any evaluations  
14 or recommendations done of your work with  
15 talc that immediately preceded your  
16 leaving that position and going over to  
17 Ms. Colamarino's old job?  
18 MS. FRAZIER: Objection to  
19 form.  
20 THE WITNESS: Not that I'm  
21 aware of.  
22 MR. TISI: Can I ask you,  
23 Kat, had you looked for any  
24 evaluations relating to, as we

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1 talked about before, has been our  
2 agreement? Because I didn't get  
3 any, and I didn't know if there  
4 were any such.  
5 MS. FRAZIER: Yeah. I  
6 think, I'm pretty sure that Rich  
7 or somebody that is working with  
8 him let you know that there  
9 weren't any. We sent you what we  
10 were able to locate.  
11 MR. TISI: Okay.  
12 BY MR. TISI:  
13 Q. Did your leaving J&J  
14 corporate have anything to do with your  
15 experience dealing with the talc issue  
16 that immediately preceded your leaving?  
17 A. Not that I'm aware.  
18 Q. Were you asked to change  
19 positions or was it something you sought?  
20 A. I was asked to fill this  
21 position from Sarah. It was a promotion  
22 that was offered to me, and I was being  
23 asked to take this by Rud Nielsen, the  
24 head of the department.

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1 MR. TISI: I don't think I  
2 have any other questions. But if  
3 you don't mind taking a break, I'd  
4 like to speak to some of my  
5 colleagues here and see what we  
6 can do.  
7 But I would reiterate for  
8 sure my request, Kat, on documents  
9 related -- because I think it is  
10 surprising to us that we saw no  
11 documents related to that  
12 November 20th meeting. And  
13 just -- I'm not saying that  
14 it's -- that there are documents.  
15 I don't know. But it surprises us  
16 that there aren't.  
17 So if you would check on  
18 that, I would appreciate that.  
19 MS. FRAZIER: Okay. That's  
20 the same request you made just a  
21 few minutes ago, right?  
22 MR. TISI: Correct.  
23 MS. FRAZIER: Yeah, let me  
24 see if I can --

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1 MR. TISI: If you don't mind  
2 taking a ten-minute -- are you  
3 going to have any redirect at all?  
4 MS. FRAZIER: Yeah, just a  
5 little bit.  
6 MR. TISI: Okay. All right.  
7 So if you don't mind, just  
8 to keep things moving, if you  
9 don't mind me just taking a break  
10 and speaking to Nick and Cameron,  
11 I appreciate it.  
12 MS. FRAZIER: I'm sure,  
13 that's fine. So do you want to  
14 come back at 2:50?  
15 MR. TISI: Sure.  
16 THE VIDEOGRAPHER: The time  
17 is 2:37 p.m. Off the record.  
18 (Short break.)  
19 THE VIDEOGRAPHER: The time  
20 is 2:54 p.m. On the record.  
21 MS. FRAZIER: Chris, are you  
22 done? I want to make sure.  
23 MR. TISI: Oh, yeah, yeah,  
24 yeah, I apologize. Yes.

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1 At this point we rest,  
2 subject to our request for  
3 additional documents. But go  
4 ahead.  
5 MS. FRAZIER: Okay.  
6 - - -  
7 EXAMINATION  
8 - - -  
9 BY MS. FRAZIER:  
10 Q. Good afternoon,  
11 Mr. McKeegan.  
12 A. Hello.  
13 Q. When -- so you've been asked  
14 a lot of questions today about your time  
15 when you were at Johnson & Johnson.  
16 About how long were you at the company  
17 total?  
18 A. I think it was five years  
19 total.  
20 Q. Okay. And how long have you  
21 been gone from the company?  
22 A. About 20 years.  
23 Q. Okay. And you've had --  
24 have you had a number of different

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1 positions, job positions, since you left  
2 Johnson & Johnson?  
3 A. Yes, I have.  
4 Q. Did any of those positions  
5 require you to engage on any issues  
6 involving talc?  
7 A. No.  
8 Q. And have you followed the  
9 science on talc since you left the  
10 company 20 years ago?  
11 A. No.  
12 Q. And have you followed even  
13 the news stories on talc in the last  
14 20 years?  
15 A. I've seen the occasional  
16 story that's come across.  
17 Q. Okay. But it's not  
18 something -- is it something that you  
19 would follow up on from time to time to  
20 make sure that you're up on talc issues?  
21 A. No.  
22 Q. Okay. And even when you  
23 were at the company, was following the  
24 science of talc something that you would

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1 have done?  
2 A. No. I was strictly in media  
3 relations.  
4 Q. And to the extent that you  
5 were going to issue a statement that  
6 pertained to talc, from a scientific  
7 standpoint, including talc safety, how  
8 would that statement have come about?  
9 MR. TISI: I'm sorry -- I'm  
10 sorry, Kat, I don't mean to  
11 interrupt. I'm not objecting to  
12 the question. I didn't hear it.  
13 It got cut off so if you would  
14 just restate the question, I'd  
15 appreciate it.  
16 MS. FRAZIER: Okay.  
17 BY MS. FRAZIER:  
18 Q. So when you were at the  
19 company, Mr. McKeegan, and if you were  
20 going to issue a statement on talc as it  
21 pertained to safety and scientific  
22 issues, how would that statement have  
23 come about?  
24 A. There would be a discussion

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1 among the people who would know the  
2 information best, and we would then draft  
3 a statement after discussing it with  
4 them, send it back to them for their  
5 review. And once it had received the  
6 necessary approvals, then we would be  
7 free to use it.  
8 Q. And were the people that  
9 you're talking about who reviewed those  
10 statements, were they subject matter  
11 experts?  
12 A. Yes.  
13 Q. In science?  
14 A. Yes, they were.  
15 Q. Okay.  
16 MR. TISI: Objection -- let  
17 me just place an objection. Go  
18 ahead.  
19 BY MS. FRAZIER:  
20 Q. Okay. Okay. And were  
21 you -- did you make sure that all of the  
22 scientific statements were accurate --  
23 let me reword that.  
24 Was it your job to ensure

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1 that the scientific statements that were  
2 issued were accurate from a scientific  
3 standpoint?  
4 A. Let me just correct it. We  
5 did not issue scientific statements. We  
6 issued statements to media. And we would  
7 have gone back to the scientists and the  
8 subject matter experts to make sure that  
9 we were providing accurate information to  
10 the media.  
11 Q. So you would have relied on  
12 others rather than interpreting them  
13 yourself?  
14 A. Yes.  
15 MR. TISI: Objection to  
16 form.  
17 I'm sorry, Mr. McKeegan,  
18 you've got to give me a chance to  
19 object.  
20 THE WITNESS: Sorry.  
21 MR. TISI: It's okay. We  
22 all do it.  
23 BY MS. FRAZIER:  
24 Q. When you were at the

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1 company, was -- and by company, I mean  
 2 Johnson & Johnson -- was Baby Powder the  
 3 only product that you had responsibility  
 4 for?  
 5 A. No. I was -- my  
 6 responsibilities included a number of  
 7 consumer products for a number of  
 8 different operating companies, especially  
 9 those that did not have their own inhouse  
 10 public relations person.  
 11 So if a question came in on  
 12 a, you know, whole variety of different  
 13 consumer products, I would -- they would  
 14 come to me and then I would get the  
 15 appropriate answers.  
 16 Q. So about how many products,  
 17 if you can estimate, would you say that  
 18 you would have been responsible for in  
 19 terms of responding to media questions?  
 20 A. I would have no way of  
 21 answering that. Many, many products, but  
 22 I couldn't give you even a guesstimate.  
 23 It was a lot of them.  
 24 Q. Okay. Fair enough.

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1 And you were asked some  
 2 questions about whether you had tried to  
 3 refresh your memory by reviewing  
 4 documents. Do you remember that question  
 5 or those questions?  
 6 A. Yes.  
 7 Q. If you had been provided  
 8 with every single document that you had  
 9 ever seen while you were at the company,  
 10 every single e-mail that you were on or  
 11 drafted, and you had reviewed those for  
 12 weeks and weeks, day in and day out,  
 13 would that have refreshed your memory and  
 14 put you back in the place where you  
 15 remembered exactly what was going on  
 16 during the time you were at the company?  
 17 MR. TISI: Let me just  
 18 object to form. Thank you.  
 19 THE WITNESS: No. You know,  
 20 I would not have been able to put  
 21 those within context within my  
 22 mind and remember all of the  
 23 events that would have been going  
 24 on 20 years ago.

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1 BY MS. FRAZIER:  
 2 Q. Okay. You were asked many  
 3 times about an e-mail where you made a  
 4 comment about possibly needing to tweak a  
 5 statement. Do you remember that?  
 6 A. Yes.  
 7 Q. Do you have any recollection  
 8 about what tweaking the statement was in  
 9 context to, what the purpose of  
 10 potentially tweaking the statement was?  
 11 MR. TISI: Objection.  
 12 THE WITNESS: According to  
 13 the e-mail that we saw, that was  
 14 in relation to a CBS News report  
 15 that was being done about talc and  
 16 asking -- and something that had  
 17 been stated by somebody at the  
 18 FDA. I don't remember who that  
 19 was.  
 20 BY MS. FRAZIER:  
 21 Q. And did you rely on others  
 22 to determine whether or not any  
 23 statements would need to be tweaked?  
 24 A. Yes, I did.

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1 Q. And who did you rely on  
 2 generally?  
 3 A. The -- generally it was  
 4 going to be the scientists with direct  
 5 knowledge of that product.  
 6 Q. You were shown a page, a  
 7 single page, actually it was two pages, a  
 8 cover page that was entitled FDA's  
 9 Cosmetics Program, and then you were  
 10 shown a specific page that appeared to be  
 11 something from the FDA. Do you recall  
 12 that?  
 13 A. This was the -- are you  
 14 talking about the 1994 memo from CTFA?  
 15 Q. No. It was a document where  
 16 you were shown the cover page and then  
 17 you were shown something. We can put it  
 18 back up there.  
 19 But my question is, would  
 20 you have ever reviewed a document that  
 21 described FDA's cosmetics program during  
 22 the course of your work at J&J?  
 23 A. I can't imagine that I would  
 24 have. I don't see how that would have

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1 pertained to the job that I was supposed  
2 to do.  
3 Q. Okay. You were asked a lot  
4 of questions about a Burson-Marsteller  
5 document authored by Kate Triggs that  
6 contained a proposal, and part of that  
7 proposal was to remove talc-based powder  
8 from the market. Do you remember that?  
9 A. Yes.  
10 Q. Do you recall whether or  
11 not, first of all, that proposal was ever  
12 presented at a meeting, whether it was  
13 the November meeting or otherwise, to  
14 senior management at Johnson & Johnson?  
15 MR. TISI: Objection.  
16 THE WITNESS: I have no  
17 recollection as to whether that  
18 was discussed or not.  
19 BY MS. FRAZIER:  
20 Q. Do you recall whose idea  
21 this proposal was?  
22 A. No.  
23 Q. You were also shown a  
24 Nichols-Dezenhall proposal that had

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1 bullet points on -- containing several  
2 recommendations. Do you remember that?  
3 A. Yes.  
4 Q. Okay. And  
5 Nichols-Dezenhall, I think you mentioned,  
6 was a public relations company; is that  
7 right?  
8 A. As I recall that, that is  
9 what they did for a living.  
10 Q. Okay. And companies like  
11 that are -- you've worked for companies  
12 similar in nature, in terms of working on  
13 media relations and things like that,  
14 public relations -- let me -- let me  
15 start over here.  
16 You've worked for companies  
17 who work with other companies on media  
18 relations; is that right?  
19 A. Yes.  
20 MR. TISI: Objection.  
21 BY MS. FRAZIER:  
22 Q. Okay. And from your  
23 experience, do these media relations  
24 companies generally advise on scientific

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1 issues from a scientific standpoint?  
2 MR. TISI: Objection.  
3 THE WITNESS: No. They --  
4 they don't.  
5 BY MS. FRAZIER:  
6 Q. And from your experience, do  
7 these companies tend to advise from a PR  
8 standpoint, rather than a scientific  
9 standpoint?  
10 MR. TISI: Objection.  
11 THE WITNESS: That is what  
12 they are hired to do. That is  
13 what they are experts in.  
14 BY MS. FRAZIER:  
15 Q. And from your review of the  
16 Nichols-Dezenhall document, and I think  
17 you said you don't recall it  
18 specifically; is that right?  
19 A. I do not recall it.  
20 Q. And from your brief review  
21 of the Nichols-Dezenhall document, and we  
22 can pull it back up if we need to.  
23 But was there any question  
24 in your mind as to whether or not

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1 Nichols-Dezenhall's proposals was based  
2 on the idea that talc is not safe?  
3 MR. TISI: Objection.  
4 THE WITNESS: Just from what  
5 little I read of that, that does  
6 not seem to be what they were  
7 basing their document on. It was  
8 more about public -- potential  
9 public perception.  
10 MS. FRAZIER: Okay. That's  
11 all the questions I have. Thank  
12 you, Mr. McKeegan.  
13 MR. TISI: I just have -- I  
14 just have a couple of very quick  
15 questions.  
16 - - -  
17 EXAMINATION  
18 - - -  
19 BY MR. TISI:  
20 Q. First of all, with regard to  
21 the media statements that you had --  
22 first of all, can you hear me?  
23 A. Yes.  
24 Q. Okay. We went through

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1 several media statements that you had.  
 2 And in fairness to you, when you got that  
 3 note from CTFA about Dr. Bailey at the  
 4 FDA expressing concern about talc and  
 5 ovarian cancer, your first reaction, as I  
 6 read it, is you reached out to both the  
 7 company lawyer and the company doctor,  
 8 Dr. Hopkins, and informed your boss, I  
 9 mean that's what you do, right?  
 10 MS. FRAZIER: Object to  
 11 form.  
 12 THE WITNESS: I would have  
 13 been looking to these people, not  
 14 just to inform them, but also to  
 15 get their input.  
 16 BY MR. TISI:  
 17 Q. Correct.  
 18 A. And Jeff Leebaw as my boss,  
 19 he would have been -- he would have known  
 20 about this beforehand because he and I  
 21 spoke many times informally during the  
 22 day.  
 23 Q. Correct. And my questions  
 24 to you were -- in fact, you asked them to

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1 call you, right? You asked them to say,  
 2 you know, the position -- we may have to  
 3 tweak this, this strikes me as important  
 4 that we got this FDA person on there  
 5 saying it's a concern, what do you guys  
 6 think, that's what you were doing, right?  
 7 MS. FRAZIER: Objection to  
 8 form.  
 9 THE WITNESS: I was  
 10 forwarding the statement back  
 11 to -- according to this e-mail, I  
 12 don't have any direct recollection  
 13 of it. But according to the  
 14 e-mail I was forwarding it back to  
 15 them to see if there was any need  
 16 to adjust the statement in any  
 17 way.  
 18 BY MR. TISI:  
 19 Q. Right. And that's what  
 20 somebody who is good at their job and  
 21 trying to get information about science,  
 22 that they try to do, right?  
 23 MS. FRAZIER: Objection to  
 24 form.

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1 THE WITNESS: I'm not trying  
 2 to get information about science.  
 3 My job would be to respond to  
 4 media questions.  
 5 BY MR. TISI:  
 6 Q. Correct. And you want to  
 7 have accurate information, and you  
 8 reached out to people who could provide  
 9 you that information, right?  
 10 A. That's correct.  
 11 Q. Okay. And when I asked you  
 12 whether or not you had done any follow-up  
 13 to see if you could answer some questions  
 14 from the last deposition, I wouldn't ask  
 15 you to look at every document that you'd  
 16 ever done for the thousands of products.  
 17 But that was a document that actually you  
 18 were shown at your prior deposition,  
 19 right?  
 20 A. That is correct.  
 21 Q. Okay. And did you reach out  
 22 and say, you know, look, I'd like to  
 23 know, did anybody ever respond to me when  
 24 I reached out and asked them, did

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1 Mr. O'Shaughnessy or Mr. Hopkins ever get  
 2 back to me, because I'd like to know  
 3 because I want to answer Mr. Tisi's  
 4 questions as accurately as possible?  
 5 MS. FRAZIER: Objection to  
 6 form.  
 7 THE WITNESS: I don't know  
 8 how I would do that. I don't --  
 9 BY MR. TISI:  
 10 Q. You ask your lawyer --  
 11 A. I haven't talked to John  
 12 O'Shaughnessy in many years. And I don't  
 13 remember who John Hopkins is.  
 14 Q. Right. But you would ask --  
 15 you would ask your lawyer, say give me  
 16 any documents that would refer to what I  
 17 did with talc, right?  
 18 MS. FRAZIER: Objection to  
 19 form.  
 20 BY MR. TISI:  
 21 Q. Did you do that?  
 22 A. No, I didn't do that.  
 23 MS. FRAZIER: Same  
 24 objection.

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1 BY MR. TISI:  
2 Q. Okay. So did you understand  
3 that I would have requested that you look  
4 at the thousands of documents for the  
5 thousands of products that you had, or  
6 that information that you may have didn't  
7 know in June or July, that you might have  
8 been asked in September when we're  
9 sitting here asking you questions under  
10 oath?  
11 MS. FRAZIER: Objection to  
12 form.  
13 THE WITNESS: I can't answer  
14 what would have been in your mind.  
15 So I can't answer your question.  
16 BY MR. TISI:  
17 Q. All right. So my question,  
18 then, what I asked you earlier was, did  
19 you do anything to refresh your  
20 recollection, even about the questions  
21 you were asked and you didn't remember in  
22 June, so that you could answer my  
23 questions here today?  
24 MS. FRAZIER: Objection to

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1 form.  
2 THE WITNESS: I reviewed the  
3 transcript of the deposition in  
4 June.  
5 BY MR. TISI:  
6 Q. And you saw the transcript,  
7 a lot of times you couldn't answer  
8 questions, right?  
9 A. That's --  
10 MS. FRAZIER: Same  
11 objection.  
12 BY MR. TISI:  
13 Q. And now, in this deposition,  
14 unlike the last deposition, you're being  
15 represented by Johnson & Johnson lawyers,  
16 right?  
17 MS. FRAZIER: Objection to  
18 form.  
19 THE WITNESS: That is  
20 incorrect.  
21 BY MR. TISI:  
22 Q. Are you being represented by  
23 Ms. Frazier?  
24 A. I was represented in June as

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1 well, by different lawyers for J&J.  
2 Q. Okay. So let me ask you  
3 this. Do you remember at any time  
4 anybody ever -- you reached out. You  
5 said we may need to tweak the statement.  
6 You reached out. You asked them. Do you  
7 remember anyone ever getting back to you  
8 and saying, you know, the FDA did or did  
9 not change its opinion with respect to  
10 the 1994 co-sponsored meeting?  
11 MS. FRAZIER: Objection to  
12 form.  
13 THE WITNESS: I have no  
14 recollection of these discussions.  
15 These were so long ago.  
16 BY MR. TISI:  
17 Q. Okay. But at least in your  
18 mind, when you saw that an FDA employee  
19 got on television or spoke to a  
20 television reporter and --  
21 MR. TISI: It is my aunt.  
22 I'm sorry, I knew she was going to  
23 do that.  
24 BY MR. TISI:

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1 Q. At least in your mind, your  
2 immediate reaction when you saw an FDA  
3 employee get on -- get on television or  
4 speak to a reporter about concerns about  
5 talc, your immediate reaction was, we may  
6 need to tweak the statement, right?  
7 MS. FRAZIER: Objection to  
8 form.  
9 THE WITNESS: My immediate  
10 reaction according to the e-mail  
11 that we read was to ask them  
12 whether there was a need to review  
13 and adjust the statement.  
14 BY MR. TISI:  
15 Q. It didn't take somebody with  
16 a scientific degree to figure that out,  
17 did it?  
18 MS. FRAZIER: Objection to  
19 form.  
20 THE WITNESS: I'm a media  
21 relations, you know, person at  
22 that point in time. So my concern  
23 would have been the potential to  
24 receive a call from CBS News.

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1 BY MR. TISI:  
2 Q. Okay. Now the other thing  
3 is, you were asked some questions about  
4 the proposals of Nichols-Dezenhall and  
5 Burson-Marsteller by your lawyer.  
6 Do you remember that, those  
7 questions?  
8 A. Yes.  
9 Q. At least with respect to the  
10 Burson-Marsteller, they didn't just come  
11 to you with a draft proposal to withdraw  
12 the product, did they?  
13 MS. FRAZIER: Objection to  
14 form.  
15 THE WITNESS: I did not read  
16 the entire -- the memo. And they  
17 did not come to us at all. They  
18 went to the CTFA.  
19 BY MR. TISI:  
20 Q. Did I say -- I meant to say  
21 Burson-Marsteller. I meant to say them.  
22 Burson-Marsteller didn't  
23 come to you and say, you know, I think we  
24 ought to consider withdrawing talc. They

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1 actually had a meeting with you, with  
2 Ms. Colamarino, and the head of consumer  
3 products, and after spending time with  
4 you and them, you came up with this joint  
5 proposal. They came up with this  
6 joint -- they wrote up the proposal,  
7 right?  
8 MS. FRAZIER: Objection to  
9 form.  
10 THE WITNESS: That seems to  
11 be the basis of the memo, yes.  
12 BY MR. TISI:  
13 Q. Right. So any suggestion  
14 that out of the blue a crisis management  
15 firm came to Johnson & Johnson and said,  
16 you know, I think we ought to think  
17 about, in the current environment, think  
18 about withdrawing the product. That's  
19 not how that happened, right?  
20 MS. FRAZIER: Objection to  
21 form.  
22 THE WITNESS: I don't  
23 understand your question,  
24 actually.

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1 BY MR. TISI:  
2 Q. The question was: This was  
3 a meeting that you and the head of  
4 consumer products and the head of public  
5 relations for that consumer products  
6 company got together and there was an  
7 exchange of information. And coming out  
8 of that meeting was the proposal that  
9 they wrote up, true?  
10 MS. FRAZIER: Objection to  
11 form.  
12 THE WITNESS: That is --  
13 that does appear to be the  
14 timeline of what happened, from  
15 what we saw today.  
16 MR. TISI: I don't have any  
17 other questions.  
18 Thank you very much, sir, I  
19 appreciate your time.  
20 MS. FRAZIER: I don't have  
21 anything else either.  
22 MR. TISI: Thank you.  
23 Kat, always good to see you.  
24 Have a good day everybody.

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1 MS. FRAZIER: We've got to  
2 get off the record, Chris.  
3 THE VIDEOGRAPHER: The time  
4 is 3:16 p.m. Off the record.  
5 (Excused.)  
6 (Deposition concluded at  
7 approximately 3:16 p.m.)  
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# CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

It was requested before completion of the deposition that the witness, JOHN McKEEGAN, have the opportunity to read and sign the deposition transcript.

MICHELLE L. GRAY,  
A Registered Professional  
Reporter, Certified Shorthand  
Reporter, Certified Realtime  
Reporter and Notary Public  
Dated: October 13, 2021

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

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## INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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## ACKNOWLEDGMENT OF DEPONENT

I, \_\_\_\_\_, do hereby certify that I have read the foregoing pages, 1 - 290, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

---

JOHN McKEEGAN

DATE \_\_\_\_\_

Subscribed and sworn  
to before me this

day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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1	LAWYER'S NOTES		
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# Exhibit 10



## MATERIAL DATA SAFETY SHEET

### TALC

Section 1. Product and Company Identification				
Product Names	IMPERIAL 200 USP IMPERIAL 250 USP IMPERIAL 400 USP	IMPERIAL 500 USP IMPERIAL 700 FCC SUPRA H USP	OLYMPIC H USP SUPREME H USP SUPRAFINO H USP	GRADE 25 USP
Synonyms	Talcum powder, Soapstone, Steatite			
Chemical Name	Talc ; Hydrous magnesium silicate	CAS#	14807-96-6	Chemical Family Phyllosilicates
Manufacturer	Luzenac America, Inc. 345 Inverness Drive South Centennial, CO 80112 Toll-free 800-325-0299	Emergency Health Information (24 hrs) 303-623-5716		

Section 2. Composition/Information on Ingredients			
Substance	CAS#	% by Weight	TLV - TWA
Talc	14807-96-6	98-100	2 mg/m3 respirable fraction (ACGIH)
Dolomite	16389-88-1	0-2	Use Talc TLV for total exposure measurements

Section 3. Health Hazards Identification and Emergency Overview	
Emergency Overview	Under normal conditions of use, this product is not expected to create any unusual emergency hazards. This product is <b>NOT</b> flammable, <b>NOT</b> reactive, <b>NOT</b> explosive, has <b>NO</b> flash point, and poses <b>NO</b> special hazards in the presence of fire.
<p style="text-align: center;">Potential Health Effects from Acute and Chronic Occupational Exposures to Talc</p> <p style="text-align: center;"><b>TARGET ORGANS</b></p> <div style="text-align: center;"> </div> <p style="text-align: center;"><b>LUNGS, RESPIRATORY SYSTEM</b></p>	
Inhalation	ACUTE: Exposure to a large concentration of air-born dust of this material may cause mechanical irritation of the mucous membranes and respiratory tract. CHRONIC: Repeated or prolonged inhalation of air-born dust of this material may cause scarring of the lungs (pulmonary fibrosis), with shortness of breath, chronic cough, and respiratory assisted heart failure. Prolonged exposure to talc can produce symptomatic talc pneumoconiosis (talcosis).
Skin Contact	ACUTE: Direct contact may cause dryness, or may cause mild irritation if an allergic predisposition exists. CHRONIC: Prolonged contact may cause dryness of the skin, or may cause mild irritation if an allergic pre-disposition exists
Eye Contact	ACUTE: Direct contact with dust may cause mechanical irritation of the eyes. CHRONIC: Repeated exposure may cause conjunctivae inflammation.
Ingestion	ACUTE: This material is considered to be harmless and inert when ingested. CHRONIC: Repeated ingestion of large doses of talc for 13 and 10 successive days by rabbits and mice revealed negative teratogenic and carcinogenic results.

Luzenac America, Inc.  
MSDS Group USP  
Issued 07/01/2006

Talc  
CAS #14807-96-6  
Page 1 of 5

**Section 4. First Aid Measures**

<b>Inhalation</b>	Remove from exposure area to fresh air. If breathing has stopped, perform artificial respiration and get medical attention immediately. Keep person warm and at rest. Treat symptomatically and supportively.
<b>Skin Contact</b>	Apply common skin moisturizers to relieve dryness. Irritations are uncommon; however, if irritation or redness develops, seek medical attention. Broken skin can be cleansed with mild soap and water.
<b>Eye Contact</b>	Wash eyes with large amounts of water or normal saline solution. If irritation or redness develops, seek medical attention.

**Section 5. Fire Fighting Measures**

<b>Flammability</b>	This product is <b>NOT</b> flammable, <b>NOT</b> reactive, <b>NOT</b> explosive, has <b>NO</b> flash point, and poses <b>NO</b> special hazards in the presence of fire. Firefighters require <b>NO</b> special protective equipment or precautions.
---------------------	--

**Section 6. Accidental Release Measures**

<b>Small Spill</b>	Use vacuum to clean up spillage. Place in sealed container.
<b>Large Spill</b>	For large spills, shovel or sweep up (while keeping dispersion of dust in air to a minimum) and place into suitable sealed containers for reclamation or later disposal. Residue should be cleaned up using a high-efficiency particulate filter vacuum. The use of water wash-down is not recommended. Wet material can cause a surface used for walking to become extremely slippery. Talc is not considered a hazardous waste by RCRA criteria (40 CFR 261).

**Section 7. Handling and Storage**

<b>Handling &amp; Storage</b>	Handle in ways to minimize the creation of dust. Preserve product in sealed containers.
-------------------------------	---

**Section 8. Exposure Controls & Personal Protection**

<b>Personal Protection</b>	Use NIOSH approved dust respirator. Use safety glasses or dust tight goggles. No special skin protection is usually required, but gloves should be worn by workers susceptible to skin irritation.
----------------------------	--



<b>Controls</b>	Provide local exhaust or process enclosure ventilation to meet published exposure limits (TLV).
-----------------	---

**Section 9. Physical & Chemical Properties**

<b>Appearance</b>	White to grayish-white powder
<b>Odor</b>	Slight earthy odor.
<b>Flammability</b>	This product is <b>NOT</b> flammable, <b>NOT</b> reactive, <b>NOT</b> explosive, has <b>NO</b> flash point.
<b>Specific Gravity</b>	2.8 (water = 1.0)
<b>Melting Point</b>	None
<b>pH</b>	Slightly basic (10% slurry in water)
<b>Solubility</b>	Water: <1 mg/mL @ 21 C      Acetone : <1 mg/mL @ 21 C

Ethanol: &lt;1 mg/mL @ 21 C

Cold acids: Insoluble

Alkalies: Insoluble

**Section 10. Stability & Reactivity Data****Stability** This product is stable, non-reactive, and non-corrosive.**Incompatibility with various substances** Non reactive/none known.**Section 11. Toxicological Information**

**Toxicology** NIOSH Registry Number: WW2710000  
 SAX Toxicity Evaluation: THR: Not available  
 Carcinogenic Status:  
 IARC: (2006 in preparation) Has concluded that perineal use of talc-based body powder is possibly carcinogenic to humans (Group 2B). This is not a route of exposure relevant for workers and applies to one specific use of talc only.  
 IARC: (2006 in preparation) Inhaled talc not containing asbestos or asbestiform fibres not classifiable as a human carcinogen (Group 3)  
 OSHA: Not listed.  
 ACGIH: A4 – Not Classifiable as a Human Carcinogen  
 NTP: Not listed. A 2-year inhalation study demonstrated clear evidence of carcinogenic activity in female rats at exposure levels of 18 mg/m<sup>3</sup>. Some evidence of carcinogenic activity was observed in male rats at the same level. No evidence of carcinogenic activity was found in mice (NTP TR-421).  
 Tumorigenic Data:  
 TClO: ihl-rat 11 mg/m<sup>3</sup>/1Y-I  
 TDLo: imp-rat 200 mg/kg  
 Other Toxicity Data:  
 Skin and Eye Irritation Data: skn-hmn 300 ug/3D-I MLD  
 Teratogenicity (Reproductive Effects Data): Not available.  
 Mutation Data: Not available.

**Section 12. Ecological Information****Ecological Data**

Species	Alga (( <i>Selenastrum capricornutum</i> ))	<i>Daphnia Magna</i>	<i>Daphnia Magna</i>
Test	Growth inhibition	Acute immobilization	Reproduction
Endpoint	Growth rate 48hr-EC50 48hr-NOEC AUG 72hr-EC50 72hr-NOEC	48hr-EC50	21 day-EC50 21 day-NOEC
Conc. (mg/L)			
FY			
References			

\*AUG=Area Under Growth curve

**Section 13. Disposal Considerations**

**Waste Disposal Information** Talc is not considered a hazardous waste by RCRA criteria (40 CFR 261). Dry material can usually be land-filled. State and Local regulations/restrictions are complex and may differ from Federal regulations. Responsibility for proper waste disposal is with the owner of the waste.

**Section 14. Transport Information**

**Transport Information** U.S. Department of Transportation - DOT: No classification assigned  
 CANADIAN Transportation of Dangerous Goods: No classification assigned  
 LAND Transport - ADR/RID: No classification assigned  
 AIR Transport - IATA/ICAO: No classification assigned (International Air Transport Association/International Civil Aviation Organization)  
 MARITIME Transport - IMDG: No classifications assigned International Maritime Dangerous Goods)  
 HARMONIZED Tariff Code: Talc – crushed or powdered. 2526.20.00. (Stat. Suffix 00)  
 EPA TSCA 12(B) Export Notification: Not listed

**Section 15. Regulatory Information**

**Chemical Inventories** EPA TSCA Status: Listed (CAS # 14807-96-6) EINECS (European No: 238-877-9)  
 CEPA Domestic Substance List – DSL: Listed CEPA Non-domestic substance List – NDSL: Not listed  
 AICS (Australian – NICNAS) ECL (Korean No: KE-32773)  
 SWISS (Giftlist No: G-6939) PICCS (Philippines)  
 ENCS/MITI (Japan) – Talc exempt IECSC (China): Listed

**Other Pertinent Classifications/Regulations**

CALIFORNIA PROP 65 Status: Talc not listed  
 STATE RIGHT-TO-KNOW: Talc listed – Illinois; Massachusetts; New Jersey; Pennsylvania; Florida  
 CLEAN AIR ACT – Ozone Depleting Chemicals (ODC's): None  
 CONEG Approved Packaging: Yes  
 NFPA RATINGS: (Scale 0-4) Health = 1, Fire = 0, Reactivity = 0

NPCA: National Paint and Coatings Association – Hazardous Material Identification System (HMIS)

HEALTH: 1\* (Chronic Potential)

FLAMMABILITY: 0

PHYSICAL: 0

PERSONAL PROTECTION: dust respirator, glasses or goggles, gloves

**Section 16. Other Information**

**Label Hazard Warning** CAUTION - PROLONGED EXCESSIVE INHALATION MAY CAUSE LUNG INJURY

**Label Precautions** UTILIZE DUST RESPIRATOR AND EXHAUST VENTILATION. REFER TO MSDS FOR COMPLETE DETAILS



TYPICAL APPEARANCE OF PRODUCT LABEL

**Primary References** ACGIH - Documentation of TLV's 2001  
 OSHA - Chemical Sampling Information: Talc (Containing no asbestos) (Revised 1/15/1999)

<b>for Key Data</b>	<p>OSHA - TALC (Containing no asbestos). OSHA comments from the June 19, 1988 Final Rule on Air Contaminants Project extracted from 54FR2324 <i>et. seq.</i></p> <p>OSHA - Compliance Interpretation Letter dated August 22, 2000 regarding talc products containing less than 1% quartz.</p> <p>OSHA - Guidelines for Employer Compliance (Advisory) 1910.1200 App E</p> <p>NIOSH - Pocket Guide to Chemical Hazards. Talc (containing no asbestos and less than 1% quartz).</p> <p>NIOSH - REL's and General Recommendations for Safety and Health. [TALC (containing no asbestos).</p> <p>AIHA - Hygienic Guides Series – Talc (1982)</p> <p>IARC - Talc Vol.: 42 (1987) (p.185) 5. Summary of Data Reported and Evaluation; Supplement 7: (1987) (p.349) Talc Not Containing Asbestiform Fibers (Group 3).</p> <p>CCOHS – Database MSDS FTSS. Network Version 2002.</p> <p>NTP – RoC/NIEHS Database. Network Version 2002.</p>
<b>Glossary</b>	<p>ACGIH – American Conference of Governmental Industrial Hygienists</p> <p>AIHA – American Industrial Hygiene Association</p> <p>CCOHS – Canadian Centre for Occupational Health and Safety</p> <p>IARC – International Agency for Research on Cancer</p> <p>NIOSH – National Institute of Occupational Safety and Health</p> <p>NTP – National Toxicological Program</p> <p>OSHA – Occupational Safety and Health Association</p> <p>PEL – Permissible Exposure Level</p> <p>TLV – Threshold Limit Value</p> <p>TWA – Time Weighted Average</p>
<b>Important Notice</b>	<p>Luzenac America, Inc. provides the information contained herein in good faith but makes no representation as to its comprehensiveness or accuracy. This document is intended only as a guide to the appropriate precautionary handling of the material by a properly trained person using this product. Individuals receiving the information must exercise their independent judgment in determining its appropriateness for a particular purpose.</p>
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